

OFFICE OF PUBLIC SCHOOL
CONSTRUCTION STAKEHOLDER MEETING
February 7, 2020

Facility Hardship Program and Seismic Mitigation Program

PURPOSE

Discuss and review a summary of all stakeholder input received regarding the regulatory amendments for the Facility Hardship Program. Continue the discussion and receive additional stakeholder input.

DESCRIPTION

The Facility Hardship Program began in 1998 with the creation of the School Facility Program. In 2006, California voters approved Proposition 1D which provided funding to create the Seismic Mitigation Program.

The Facility Hardship Program provides funding assistance in cases of extraordinary circumstances that have caused an imminent health and safety threat to students and staff. Extraordinary circumstances may include seismic mitigation of the Most Vulnerable Category 2 facilities. Qualified projects may receive Facility Hardship funding to repair, replace, or construct School Buildings or related required components.

Proposed program regulation changes are included as Attachment A.

AUTHORITY

See Attachment B for current authority and regulations.

BACKGROUND

The Office of Public School Construction (OPSC) held public meetings on January 10, 2020 and January 31, 2020 to discuss proposed regulations of the Facility Hardship and Seismic Mitigation Program. This item continues the discussion including proposed grant amounts for a Portable Replacement Grant and the proposed format for the *Facility Hardship Cost Estimate* (Form SAB 58-01). Additionally, questions and comments made by stakeholders during and since the initial January 10, 2020 meeting have been addressed in this item.

DISCUSSION

Proposed Program Changes

Facility Hardship Cost Estimate Form

The regulations already require that districts submit a cost estimate. The proposed regulations clarify the requirements as described in Sections 1859.82.1(b)(2)(C),

1859.82.1(c)(3)(C), 1859.82.2(b)(2)(C), and 1859.82.2(c)(3)(D) and require the cost estimate to be in a specific format. To facilitate this process, OPSC has created a proposed form for the Facility Hardship Cost Estimate named SAB 58-01; a copy of this form is provided as a separate document to accompany this stakeholder item.

Districts must reference the most current published edition of the Current Construction Remodeling Costs publication by Sierra West Publishing for the reference data required to complete the form. Total unit costs must be entered at the F3 level of difficulty.

This form is distinct and separate from the Site Development Worksheet for Additional Grants (SDWAG) that is used to request a supplemental grant for site development in New Construction or Replacement projects. Projects requesting a separate site development grant would be required to submit a separate site development worksheet.

Once approved by the Office of Administrative Law, OPSC will annually publish the SAB 58-01 in a template format with updated allowances in conformance with the Current Construction Remodeling Costs publication.

Replacement Grants for Portable School Buildings

Based on one publically available piggyback contract provided to OPSC, OPSC calculated cost to purchase, deliver and install a portable to illustrate what replacement grant could be. The source bid document used for the determination of these grants can be found on Attachment C.

The Replacement Grant for Portables would follow the calculation procedure for Replacement Square Footage as outlined in proposed Section 1859.82.1(b)(4)(B)2 which provides a State grant equaling 50 percent of the calculated replacement cost. Based on the data currently available to OPSC, the proposed Portable Replacement Grant would provide a matching share amount of \$46.56 per square foot for replacement portables classified as "other" space and \$118.62 per square foot portable square footage classified as "toilet" space. These amounts include costs for delivery and installation of the portable and will be adjusted annually as part of Annual Adjustment to School Facility Program Grants.

OPSC will continue to seek supporting documentation from other school districts and manufacturers in order to refine this grant.

Supplemental Grant for Small Size Projects

The current supplemental grant for Small Size Projects is calculated based on the number of pupil grants requested for New Construction projects. The Facility Hardship and Seismic Mitigation Programs can fund replacement areas using the Square Footage Grant which does not directly equate to pupil grants.

Staff has proposed an update to the Small Size Project Grant regulations to provide a calculation for eligible Facility Hardship replacement projects to receive this grant. This proposed calculation uses the Square Footage Grant to estimate the equivalent number of pupil grants for the purposes of determining the project's eligibility for the supplemental Small Size Project Grant.

The proposed calculation is provided in the text of Attachment A under Section 1859.83(b).

Insurance Proceeds Collectable

In the course of reviewing proposed regulation changes, staff has provided clarifying language for how insurance proceeds are offset from eligible projects. There was a change made to how insurance proceeds are offset; for rehabilitation projects the state share of insurance proceeds was changed from 50% to 60% to align with project funding.

Advanced Site and Design Funding for Seismic Mitigation Program Projects

In the course of reviewing proposed regulation changes, staff has provided clarifying language for how advanced design and site funding is calculated for seismic mitigation projects. The changes reflect a change to the seismic rehabilitation design and site grants from 40% to 25% of the state share to reflect the appropriate percentages for rehabilitation projects.

Results of stakeholder feedback on the proposed changes to the Facility Hardship and Seismic Mitigation Program:

Staff has reviewed the stakeholder feedback presented at the January 10, 2020 and January 31, 2020 meetings and received by email. OPSC has incorporated the following feedback into the proposed regulations:

- Clarification that certain work required to obtain DSA approval is allowed as part of a qualifying Facility Hardship or Seismic Mitigation Program application (1859.82.1.)
- Removal of Non-Severe and Severe classrooms from the square footage chart in 1859.82.1 and 1859.82.2 that prescribes square footage of replacement facilities. Severe and Non-Severe classroom space will instead be replaced at the square footage previously existing.
- Additional language clarifying State Agency approvals required to be submitted as part of an Approved Application.
- Clarification regarding replacement square footage for areas not described in the Replacement Square Footage chart.
- Increased timeline to submit an Approved Application for funding when extreme or unusual circumstances are demonstrated by the district that have prevented submission of application to OPSC.

Additionally, Staff would like to thank stakeholders for the following feedback that OPSC considered but did not incorporate in the proposed regulatory changes:

- The usage of actual costs instead of cost estimation values in the required cost estimate.
 - The SFP is a formula-driven grant program that was not intended to fund the exact cost of construction, as costs fluctuate depending on a variety of factors and geographic locations. The use of a formula-driven calculation ensures the equitable calculation of grant funding for all school districts.

As part of OPSC's review of a project, the SFP does provide limited

increases to SFP grants, including Facility Hardship and SMP grants, for local bidding and construction climates in California through supplemental grants such as the Excessive Cost Hardship Grant for Geographic Location which provides a percent increase to overall grants based on the school district's location. There are also increases for various soft costs in cost estimates such as overhead and profit, architect fees, testing and inspection, etc. SFP Regulations do not require any reductions to grants based on favorable bidding climates.

- Consideration of F4 level of difficulty costing for projects with certain types of work.
 - OPSC has previously confirmed with Sierra West that the F4 level of difficulty would only be applied to particular line items. Given that the proposed regulations provide increased funding at the F3 level of difficulty across the board, that additional supplemental grants have been made available for projects, and that these proposed regulation attempt to streamline the application process, OPSC does not feel that it is appropriate to allow an exception for F4 level of difficulty funding.
- Providing funding for Industrial and Technology/ Education Laboratory in the same amount as provided by the Career Technical Education Facilities Program (CTEFP).
 - The CTEFP does not provide funds on a square footage basis. The CTEFP provides a cap of \$3 million for projects that include the construction of new facilities. Districts have flexibility in project design and use of funds.
 - OPSC has confirmed with CDE the minimum recommended size for Industrial and Technology/ Education Laboratory classrooms is 1300 square feet.
- Providing funding for theoretical site development requests for projects using replacement funding to complete rehabilitation work
 - OPSC acknowledges that some districts that choose this option do so as a result of financial constraints. However, theoretical site development calculations are nearly impossible to verify or apply equitably because it is based on work that will not be completed. OPSC does not feel that this is an appropriate allocation of bond funds.

CLOSING REMARKS/NEXT STEPS

ATTACHMENT B
AUTHORITY REFERENCE

Education Code Section 17075.10.

- (a) A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event.
- (b) A school district applying for hardship state funding under this article shall comply with either paragraph (1) or (2).
 - (1) Demonstrate both of the following:
 - (A) That due to extreme financial, disaster-related, or other hardship the school district has unmet need for pupil housing.
 - (B) That the school district is not financially capable of providing the matching funds otherwise required for state participation, that the district has made all reasonable efforts to impose all levels of local debt capacity and development fees, and that the school district is, therefore, unable to participate in the program pursuant to this chapter except as set forth in this article.
 - (2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. Funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis from funds reserved for that purpose in any bond approved by the voters after January 1, 2006. If the board determines that the seismic mitigation work of a school building would require funding that is greater than 50 percent of the funds required to construct a new facility, the school district shall be eligible for funding to construct a new facility under this chapter.
- (c) The board shall review the increased costs that may be uniquely associated with urban construction and shall adjust the per-pupil grant for new construction or modernization hardship applications as necessary to accommodate those costs. The board shall adopt regulations setting forth the standards, methodology, and a schedule of allowable adjustments, for the urban adjustment factor established pursuant to this subdivision.

(Amended by Stats. 2008, Ch. 179, Sec. 41. Effective January 1, 2009.)

ATTACHMENT B

SFP Regulation Section 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is \$199.5 million.

(A) If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. The cost/benefit analysis shall not include increased costs associated with high performance related costs or components, with the exception of those high performance components that were pre-existing in the classroom or related facility. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for either grant below, as applicable:

1. Modernization Excessive Cost Hardship Grant for Rehabilitation Costs pursuant to Section 1859.83(e), or 2. A grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

(B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The cost/benefit analysis shall not include increased costs associated with high performance related costs or components, with the exception of those high performance components that were pre-existing in the classroom or related facility. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable

Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.

(C) The seismic mitigation projects must meet all of the following requirements:

1. The construction contract was executed on or after May 20, 2006;
2. The project funding provided shall be for the minimum work necessary to obtain DSA approval;
3. The building is designed for occupancy by students and staff; and
4. The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code, Part 2, Chapter 18, section 1803A and with the concurrence of the California Geological Survey.

The structural engineer's report shall conform to the guidelines prepared by the DSA, in accordance with Education Code Section 17310.

(D) Notwithstanding Sections 1859.93 and 1859.93.1, all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an Approved Application for funding.

(E) If an Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the Seismic Mitigation Program authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.

For any Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings not apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) pursuant to this Section, the application shall be returned to the applicant.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the replaced facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square

footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. Additional funding may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) or (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73, project assistance pursuant to Section 1859.73.1, and high performance incentive pursuant to Section 1859.77.4 provided that the high performance points attained are related to the scope of the Facility Hardship project. The amounts shown will be adjusted in the manner prescribed in Section 1859.71. For any project funded in whole or in part from any State bond funds for which the construction contract is awarded prior to January 1, 2012, the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4(a). For any project for which the construction contract is awarded on or after January 1, 2012, the grant may be adjusted in the manner prescribed in Section 1859.71.4(c) and subject to the limitations established in Section 1859.71.4(d).

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district, the HSAA or Super HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.