

OFFICE OF PUBLIC SCHOOL CONSTRUCTION  
STAKEHOLDER MEETING  
January 30, 2025

IMPLEMENTATION OF PROPOSITION 2 FOR THE SCHOOL FACILITY PROGRAM

PURPOSE

The purpose of this meeting is to engage with stakeholders regarding the implementation of the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), and to discuss and collect feedback on proposed amendments to the School Facility Program (SFP) Regulations for the following topics:

- Topic 1 – Financial Hardship (Attachment A1)
- Topic 2 – Modernization Eligibility for Schools Located on Military Installations and New Construction Eligibility for Small School Districts (Attachment A2)
- Topic 3 – Eligible Expenditures (Attachment A3)
- Topic 4 – School Facility Program (SFP) Matching Share (Attachment A4)
- Topic 5 – 75-Year Old Building Supplemental Grant (Attachment A5)

BACKGROUND

Proposition 2, or Assembly Bill (AB) 247 (Muratsuchi, Chapter 81, Statutes of 2024), the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024, was approved by a majority of California's voters on November 5, 2024.

The passage of Proposition 2 necessitates modifications to the SFP Regulations to allow school districts to continue submitting eligibility and funding applications to OPSC that are adherent to the amended or additional components of Education Code. Related to these statutory changes, OPSC must implement the provisions of AB 247 by amending existing SFP Regulations to adhere to the new statutory requirements.

As a result of this, OPSC is requesting stakeholder feedback regarding these changes. Each of the topics listed within the Purpose section of this report is broken out into its own attachments for stakeholder reference.

AUTHORITY

See Attachments A1a, A2a, A3a, A4a, and A5a.

SUMMARY AND NEXT STEPS

Attached is a series of topics related to Financial Hardship, Modernization Eligibility for Schools Located on Military Installations and New Construction Eligibility for Small School Districts, Eligible Expenditures, School Facility Program (SFP)

Matching Share, and 75-Year Old Building Supplemental Grant. Staff will review any feedback obtained in today's meeting and anything received through close of business February 14, 2025 at noon, for consideration and address those suggestions in the next public meeting on this topic. If you would like to submit written feedback subsequent to today's meeting, please email your suggestions to the OPSC Communications Team at [OPSCCommunications@dgs.ca.gov](mailto:OPSCCommunications@dgs.ca.gov).

## ATTACHMENT A1

### OFFICE OF PUBLIC SCHOOL CONSTRUCTION STAKEHOLDER MEETING January 30, 2025

#### PROPOSED REGULATORY AMENDMENTS FOR MAXIMUM TOTAL BONDING CAPACITY FOR FINANCIAL HARDSHIP QUALIFICATION AND BRIDGE FINANCING

##### PURPOSE

To discuss and receive stakeholder feedback regarding proposed regulatory amendments resulting from Assembly Bill (AB) 247, the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), which was approved by a majority of California's voters on November 5, 2024, related to the School Facility Program (SFP) Regulation Section 1859.81.

##### AUTHORITY

See Attachment A1a.

##### BACKGROUND

###### *Financial Hardship Program*

The Financial Hardship Program assists school districts and County Offices of Education (COE) that cannot provide their matching share to an SFP new construction or modernization project. The SFP regulatory authority for this program is found within SFP Regulation Section 1859.81, which outlines the criteria for qualifying for Financial Hardship. If a Financial Hardship district meets the basic eligibility requirements outlined in this regulation, and local funds are less than the district's required contribution to the project, then the State will provide a financial hardship grant for the difference between the available amount and the district match, up to 100 percent of the required matching share.

###### *Proposition 2 – Financial Hardship*

Among the provisions of Proposition 2, Section 17075.15 of the Education Code (EC) has been amended to increase the maximum level of total bonding capacity that a school district could have and still be eligible for financial hardship assistance from \$5,000,000 to \$15,000,000.

Additionally, EC Section 17075.15 has been amended to indicate that commencing with the 2026-27 fiscal year, the maximum level of total bonding capacity shall be adjusted each fiscal year by the inflation adjustment computed pursuant to EC Section 42238.02, paragraph (2) of subdivision (d).

Due to the statutory amendments of EC Section 17075.15, the criteria for qualifying for Financial Hardship has changed, and conforming regulatory amendments are necessary. As a result, staff has developed a proposed amendment to the SFP Regulation Section 1859.81, included on Attachment A1b, that is reflective of the above-mentioned EC changes.

*Bridge Financing Regulatory Amendment*

In January 2009, the Office of Public School Construction (OPSC) issued a policy letter to all school districts as a result of the Department of Finance's Budget Letter 08-33 which detailed action taken by the Pooled Money Investment Board at their December 17, 2008 meeting. The policy letter provided guidelines to school districts that proceeded with projects at their own risk, prior to the receipt of state funding. The policy established criteria for the expenditure of local funds that would be allowable and not considered proceeds as available for district contribution on their SFP projects.

The "bridge financing policy" allows for interfund borrowing as a tool for districts to use to continue with their projects while waiting for approval for financial hardship status and project funding. These mechanisms allow districts to access temporary funding, ensuring that projects can proceed without delay caused by gaps in SFP funding.

While OPSC has continued to allow bridge financing since 2009, SFP Regulation 1859.81 does not specifically address this practice and OPSC is proposing to formalize the practice in regulation. To provide transparency and clarity to existing guidelines, staff has proposed amendments to Regulation Section 1859.81, as reflected in Attachment A1b, to add the process for districts using bridge financing or interfund borrowing while seeking financial hardship consideration. These amendments are separate from the statutory changes to EC Section 17075.15.

**STAFF ANALYSIS/DISCUSSION**

The proposed amendments to the SFP Regulations are summarized below.

**Summary of Changes to SFP Regulation Section 1859.81**

*SFP Regulation Section 1859.81 – Financial Hardship*

For applications received before October 31, 2024, under SFP regulations, a county office of education automatically qualifies for financial hardship status. School districts may qualify for financial hardship status if they are levying developer fees at the maximum rate justified under law, AND they meet one of the four qualifying criteria:

1. The school district's current outstanding bonded indebtedness is at least 60 percent of the total bonding capacity of the school district, or
2. The school district has had a successful registered voter bond election for at least the maximum allowed under Proposition 39 within the previous two years, or
3. The school district has a bonding capacity of \$5 million or less, or
4. The school district has provided "other evidence" or reasonable effort to fund its matching share to the satisfaction of the board.

For applications received on or after October 31, 2024, Proposition 2 changes the bonding capacity threshold from \$5 million or less to \$15 million or less under SFP Regulation Section 1859.81(c)(4). Additionally, Proposition 2 stipulates that beginning in the 2026/2027 fiscal year, the total bonding capacity amount shall be adjusted, and each fiscal year thereafter, by the inflation adjustment computed pursuant to paragraph (2) of subdivision (d) of EC Section 42238.02:

As a result, for applications received on or after October 31, 2024, school districts may qualify for financial hardship status if they are levying developer fees at the maximum rate justified under law, AND they meet one of the four qualifying criteria:

1. The school district's current outstanding bonded indebtedness is at least 60 percent of the total bonding capacity of the school district, or
2. The school district has had a successful registered voter bond election for at least the maximum allowed under Proposition 39 within the previous two years, or
3. The school district has a bonding capacity of \$15 million or less, or
4. The school district has provided "other evidence" or reasonable effort to fund its matching share to the satisfaction of the board.

As the proposed regulatory change is only conforming regulation to statute, OPSC staff intend to apply the new threshold immediately to all applications requesting financial hardship assistance that are received on or after October 31, 2024.

*SFP Regulation Section 1859.81 – Bridge Financing*

OPSC proposes amendments to Section 1859.81 to formalize the bridge financing policy in regulation. The policy outlines the criteria for expending funding on a SFP project prior to Board approval.

Project expenditures made prior to a district requesting financial hardship status will not be considered available for providing the required local match, provided a district uses bridge financing and/or interfund borrowing that meets the outlined criteria within the proposed amendment, added to SFP Regulation Section 1859.81 as subsection (i).

The intention with the addition of subsection (i) is to provide transparency and clarification as to the process of using bridge financing and/or interfund borrowing. Currently, the SFP Regulations do not clearly outline the requirements for using these processes. The addition of this subsection follows current OPSC policy related to districts seeking Financial Hardship qualification and intending to use bridge financing and/or interfund borrowing. These processes are outlined in the memo issued to districts and county office of educations on January 16, 2009, and is not a new procedure or criteria.

As a result of these changes, staff has prepared proposed amendments to SFP Regulation Section 1859.81. OPSC is requesting stakeholder feedback on these amendments, as reflected on Attachment A1b.

## ATTACHMENT A1a

### AUTHORITY All Applications

#### **Education Code (EC) 17070.35 – General Provisions**

(a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

#### **EC Section 42238.02 – Apportionments and Revenue Control**

...

(d) The Superintendent shall compute a grade span adjusted base grant equal to

the total of the following amounts:

(1) For the 2013–14 fiscal year, a base grant of:

(A) Six thousand eight hundred forty-five dollars (\$6,845) for average daily attendance in kindergarten and grades 1 to 3, inclusive.

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(B) Six thousand nine hundred forty-seven dollars (\$6,947) for average daily attendance in grades 4 to 6, inclusive.

(C) Seven thousand one hundred fifty-four dollars (\$7,154) for average daily attendance in grades 7 and 8.

(D) Eight thousand two hundred eighty-nine dollars (\$8,289) for average daily attendance in grades 9 to 12, inclusive.

(2) In each year the grade span adjusted base grants in paragraph (1) shall be adjusted by the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 10 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 10 of the preceding fiscal year, as reported by the Department of Finance.

...

### **School Facility Program (SFP) Regulation Section 1859.81. Financial Hardship.**

Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

(1) Approved interim housing expenditures.

(2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.



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- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.
- (5) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Career Technical Education Facilities Program when the amount expended out of that fund does not exceed the applicant's share of the maximum grant amount apportioned.
- (6) Funding that is transferred into a Special Reserve Fund and used for the express purpose of the Overcrowding Relief Grant when the amount expended out of that fund does not exceed the amount of the site acquisition and design costs of the project and the district has submitted an approved Form SAB 50-11.
- (7) Funding that is used for the express purpose of reimbursing the State a proportionate share of financial hardship received when there has been a transfer of a special education program and title to the facility. In addition, the funding was used within five years of the title transfer.
- (8) Funding to pay for obtaining a structural report pursuant to Section 1859.82.2 for an approvable and funded seismic mitigation project.
- (9) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period, with the exception of the funding identified in (6). The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

When Overcrowding Relief Grant funding is set aside pursuant to (6) and the School District has not submitted, or the OPSC has not accepted, a Form SAB 50-04 for an Overcrowding Relief Grant within three years from the date of deposit into the Special Reserve Fund, or the School District has not met the requirements in Sections 1859.90 or 1859.105, remaining funds plus interest accrued at the Pooled Money Investment Board rate at that time period shall be deemed available as matching contribution on a subsequent financial hardship project or be captured through an audit adjustment pursuant to Section 1859.106.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

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- (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
- (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
- (3) Subtract (b)(2) from (b)(1).
- (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
- (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per classroom in each reporting period for the cost to provide necessary interim housing for the currently unhoused pupils displaced as a result of a SAB approved seismic mitigation project pursuant to Section 1859.82,2. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing shall be the quotient of the displaced pupils by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number. If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

- (1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding

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capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

(d) The district has not signed a contract for acquisition or construction of classrooms that replace existing facility(ies), which were included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a locally funded project during the five-year period immediately preceding the district's application for financial hardship assistance. This restriction may be lifted if the Board finds that unforeseen and extenuating circumstances existed that required the district to use local funds to replace the facility(ies).

(e) If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

(1) Once a district has been notified by OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

(2) If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship

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status under the provisions of this Section by submittal of a new request for financial hardship status.

(3) If the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

(f) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative July 1, 2011.

(g) A project added to an unfunded list on or after July 1, 2011 will be subject to the review detailed in section (e)(3). For projects added to an unfunded list between February 25, 2009 and June 30, 2011, only the district's financial records on or after July 1, 2011 will be considered in calculating any adjustment to the district's matching share.

(h) On or after September 22, 2017, a district may submit a request for funding in advance of obtaining a determination of Financial Hardship.

(1) To be considered for Financial Hardship, the district must check the box on the Form SAB 50-04 requesting Financial Hardship pursuant to this subsection when submitting a request for funding.

(2) Prior to processing an application OPSC will notify the district in writing to submit the necessary documentation for a Financial Hardship analysis pursuant to (a), (b), (c) and (d). OPSC will not accept any documents for a Financial Hardship analysis in advance of the notification. Failure to submit the requested documentation within 60 calendar days of OPSC's notification will result in either a. or b.:

a. District may amend their Form SAB 50-04 to exclude the request for Financial Hardship determination.

b. OPSC will return the request for funding and related materials to the district.

(3) Upon notification of Financial Hardship approval, any Form SAB 50-04 processed within 180 calendar days of the approval date will be included in the approval.

(4) For any Form SAB 50-04 processed more than 180 calendar days after the date of the Financial Hardship approval the district shall re-qualify for Financial Hardship status.

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### AUTHORITY

Applications Received on or after October 31, 2024

#### **EC Section 17075.15 – Hardship Application:**

(a) From funds available from any bond act for the purpose of funding facilities for school districts with a financial hardship, the board may provide other construction, modernization, or relocation assistance as set forth in this chapter or Chapter 14 (commencing with Section 17085) to the extent that severe circumstances may require, and may adjust or defer the local financial participation, as pupil health and safety considerations require to the extent that bond act funds are provided for this purpose.

(b) The board shall adopt regulations for determining the amount of funding that may be provided to a district, and the eligibility and prioritization of funding, under this article.

(c) The regulations shall define the amount, and sources, of financing that the school district could reasonably provide for school facilities as follows:

(1) Unencumbered funds available in all facility accounts in the school district, including, but not limited to, fees on development, redevelopment funds, sale proceeds from surplus property, funds generated by certificates of participation for facility purposes, bond funds, federal grants, and other funds available for school facilities, as the board may determine.

(2) The board may exclude from consideration all funds encumbered for a specific capital outlay purpose, a reasonable amount for interim housing, and other funds that the board may find are not reasonably available for the project.

(d) The regulations shall also specify a method for determining required levels of local effort to obtain matching funds. The regulations shall include consideration of at least all of the following factors:

(1) Whether the school district has passed a bond measure within the two-year period immediately preceding the application for funding under this article, the proceeds of which are substantially available for use in the project to be funded under this chapter, but remains unable to provide the necessary matching share requirement.

(2) Whether the principal amount of the current outstanding bonded indebtedness issued for the purpose of constructing school facilities for the school district and secured by property within the school district or by revenues of, or available to, the school district, which shall include general obligation bonds, Mello-Roos bonds, school facility improvement district bonds, certificates of participation, and other debt instruments issued for the purpose of constructing school facilities for the school district and for which owners of property within the school district or the school district are paying debt service is at least 60 percent of the school district's total bonding capacity, as determined by the board.

(3) (A) Whether the total bonding capacity, as defined in Section 15102 or 15106, as applicable, is fifteen million dollars (\$15,000,000) or less, in which case, the school district shall be deemed eligible for financial hardship.

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(B) Commencing with the 2026–27 fiscal year, the amount described in subparagraph (A) shall be adjusted each fiscal year by the inflation adjustment computed pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

(4) Whether the application for funding under this article is from a county superintendent of schools.

(5) Whether the school district submits other evidence of substantial local effort acceptable to the board.

(6) The value of any unused local general obligation debt capacity, and developer fees added to the needs analysis to reflect the district's financial hardship, available for the purposes of school facilities financing.

*(Amended by Stats. 2024, Ch. 81, Sec. 19. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

## ATTACHMENT A1b

### PROPOSED REGULATIONS

#### Section 1859.81. Financial Hardship.

Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for ~~financial hardship~~ Financial Hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for ~~financial hardship~~ Financial Hardship status shall be deemed available as a matching contribution.

After the initial request for ~~financial hardship~~ Financial Hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent ~~financial hardship~~ Financial Hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial ~~financial hardship~~ Financial Hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.
- (5) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Career Technical Education Facilities Program when the amount expended out of that fund does not exceed the applicant's share of the maximum grant amount apportioned.
- (6) Funding that is transferred into a Special Reserve Fund and used for the express purpose of the Overcrowding Relief Grant when the amount expended out of that fund does not exceed the amount of the site acquisition and design costs of the project and the district has submitted an approved Form SAB 50-11.
- (7) Funding that is used for the express purpose of reimbursing the State a proportionate share of ~~financial hardship~~ Financial Hardship received when there has been a transfer of a special education program and title to the facility. In addition, the funding was used within five years of the title transfer.
- (8) Funding to pay for obtaining a structural report pursuant to Section 1859.82.2 for an approvable and funded seismic mitigation project.
- (9) All other capital facility funding for a period of three years when no subsequent ~~financial hardship~~ Financial Hardship request is made during this period, with the exception of the funding identified in (6). The three-year period begins with the date of the most recent ~~financial hardship~~ Financial Hardship new construction or modernization adjusted grant funding apportionment.

When Overcrowding Relief Grant funding is set aside pursuant to (6) and the School District has not submitted, or the OPSC has not accepted, a Form SAB 50-04 for an Overcrowding Relief Grant within three years from the date of deposit into the Special Reserve Fund, or the School District has not met the requirements in Sections 1859.90 or 1859.105, remaining funds plus interest accrued at the Pooled Money Investment Board rate at that time period

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shall be deemed available as matching contribution on a subsequent ~~financial hardship~~ Financial Hardship project or be captured through an audit adjustment pursuant to Section 1859.106.

The ~~financial hardship~~ Financial Hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
  - (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
  - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
  - (3) Subtract (b)(2) from (b)(1).
  - (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
  - (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
  - (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
  - (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per classroom in each reporting period for the cost to provide necessary interim housing for the currently unhoused pupils displaced as a result of a SAB Board approved seismic mitigation project pursuant to Section 1859.82,2. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing shall be the quotient of the displaced pupils by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
  - (1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for ~~financial hardship~~ Financial Hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
  - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for ~~financial hardship~~ Financial Hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
  - (3) It is a County Superintendent of Schools.



## ATTACHMENT A1b

- (4) (A) For applications received before October 31, 2024, ~~the district's total bonding capacity at the time of the request for financial hardship~~ Financial Hardship status is \$5 million or less.  
(B) For applications received on or after October 31, 2024, the district's total bonding capacity at the time of the request for Financial Hardship status is \$15 million or less. Beginning July 1, 2026, the total bonding capacity amount shall be adjusted each fiscal year thereafter by the inflation adjustment computed pursuant to paragraph (2) of subdivision (d) of Education Code Section 42238.02.
- (5) Other evidence of reasonable effort as approved by the SAB Board.

If the district's request for ~~financial hardship~~ Financial Hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied ~~financial hardship~~ Financial Hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.
- (d) The district has not signed a contract for acquisition or construction of classrooms that replace existing facility(ies), which were included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a locally funded project during the five-year period immediately preceding the district's application for ~~financial hardship~~ Financial Hardship assistance. This restriction may be lifted if the Board finds that unforeseen and extenuating circumstances existed that required the district to use local funds to replace the facility(ies).
- (e) If the district meets the ~~financial hardship~~ Financial Hardship requirements in this Section, the amount of ~~financial hardship~~ Financial Hardship is equal to the district's matching share less funds deemed available in (a).
- (1) Once a district has been notified by OPSC that it meets the requirements of ~~financial hardship~~ Financial Hardship in this Section, the district may file Form SAB 50-04 under the provisions of ~~financial hardship~~ Financial Hardship anytime within a period of 180 calendar days from the date of the OPSC notification.
- (2) If the district does not submit Form SAB 50-04 under the provisions of ~~financial hardship~~ Financial Hardship within 180 calendar days of the OPSC notification of approval of ~~financial hardship~~ Financial Hardship status, the district must re-qualify for ~~financial hardship~~ Financial Hardship status under the provisions of this Section by submittal of a new request for ~~financial hardship~~ Financial Hardship status.
- (3) If the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

~~Financial hardship~~ Hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

- (f) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of ~~financial hardship~~ Financial Hardship and the project(s) has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative July 1, 2011.
- (g) A project added to an unfunded list on or after July 1, 2011 will be subject to the review detailed in section (e)(3). For projects added to an unfunded list between February 25, 2009 and June 30, 2011, only the district's financial records on or after July 1, 2011 will be considered in calculating any adjustment to the district's matching share.

## ATTACHMENT A1b

- (h) On or after September 22, 2017, a district may submit a request for funding in advance of obtaining a determination of Financial Hardship.
- (1) To be considered for Financial Hardship, the district must check the box on the Form SAB 50-04 requesting Financial Hardship pursuant to this subsection when submitting a request for funding.
- (2) Prior to processing an application OPSC will notify the district in writing to submit the necessary documentation for a Financial Hardship analysis pursuant to (a), (b), (c) and (d). OPSC will not accept any documents for a Financial Hardship analysis in advance of the notification. Failure to submit the requested documentation within 60 calendar days of OPSC's notification will result in either a. or b.:
  - a. District may amend their Form SAB 50-04 to exclude the request for Financial Hardship determination.
  - b. OPSC will return the request for funding and related materials to the district.
- (3) Upon notification of Financial Hardship (FH) approval, any Form SAB 50-04 processed within 180 calendar days of the approval date will be included in the approval.
- (4) For any Form SAB 50-04 processed more than 180 calendar days after the date of the Financial Hardship approval the district shall re-qualify for Financial Hardship status.
- (i) Any project expenditures made prior to a district requesting Financial Hardship status is considered contribution due to expenditure and will reduce the Financial Hardship apportionment amount received on the project, with the exception of: A district may begin making expenditures on a project while seeking Financial Hardship consideration only if the district uses bridge financing and/or interfund borrowing that meets the following criteria:
  - (1) The district must contact the OPSC in writing with their request to seek bridge financing prior to making any project expenditures.
  - (2) The request must specifically list the SFP project(s), and SFP application number(s) (if known) that will be funded with the bridge financing.
  - (3) The district's bridge financing instrument must either be a certificate of participation, lease-purchase agreement, or other lease financing arrangement entered into with a party other than the applicant district for the purpose of financing eligible SFP project costs authorized in the Education Code.
  - (4) Inter-fund borrowing that conforms to Education Code Section 42603 requirements may also be utilized to allow a district to move forward with their SFP Financial Hardship project(s). The district must provide detailed General Ledger (GL) transactions that clearly indicate the following:
    - a. The transfer out of the fund the district is borrowing from and.
    - b. The transfer into the fund the monies were deposited in.
  - (5) The total amount of net bridge financing and interfund borrowing shall not exceed the sum of the Modernization Adjusted Grant or New Construction Adjusted Grant, including Financial Hardship funding.
  - (6) The district must have a school board resolution which details the bridge financing instrument or interfund transfer that will be used to make any project expenditures that will occur prior to receiving state funding. The school board resolution must include the following:
    - a. Name the specific project(s) that will be moved forward.
    - b. List the specific debt instrument or interfund borrowing that will be used to move the project(s) forward.
    - c. List the exact amount of funding that will be borrowed or transferred.
    - d. Statement that once any state funding is released for the SFP project(s), the district must utilize the grant funding to retire the bridge financing debt and /or repay the interfund transfer within 60 calendar days of receiving the state funding.
    - e. If using debt financing, acknowledgement that the district is entering into the debt financing at their own risk and that there is no guarantee of future state funding.
    - f. Acknowledgement that any expenditures made prior to the school board resolution will be considered as the district's required matching contribution due to expenditures.
  - (7) Once any state funding is released for the SFP project(s), the district must utilize the grant funding to retire the bridge financing debt and /or repay the interfund transfer within 60 calendar days of receiving the state funding.

## ATTACHMENT A1b

- (8) Within 30 days of retiring the debt service, the district must submit to OPSC documentation demonstrating that the debt has been retired. This documentation shall include the following:
  - a. A detailed general ledger which documents the transaction; and
  - b. School board resolution or school board minutes authorizing the debt retirement.
- (9) After state funds are released, the state will treat the debt as retired, and the bridge financing related debt will not be included in the district's bonded indebtedness calculation for the purpose of a future Financial Hardship review.
- (10) Any bridge financing debt not retired after state funding is received will be considered as available contribution for the project and result in a reduction of the Financial Hardship funding on the project.

Note: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15, and 17079.20, Education Code.

## ATTACHMENT A2

### OFFICE OF PUBLIC SCHOOL CONSTRUCTION STAKEHOLDER MEETING January 30, 2025

#### PROPOSED AMENDMENTS TO THE SCHOOL FACILITY PROGRAM NEW CONSTRUCTION AND MODERNIZATION ELIGIBILITY REGULATIONS

##### PURPOSE

To discuss and receive stakeholder feedback regarding proposed regulatory amendments resulting from Assembly Bill (AB) 247, the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), which was approved by a majority of California's voters on November 5, 2024, related to the School Facility Program (SFP) Regulation Sections 1859.51, 1859.60, 1859.61, 1859.78.8, 1859.79.2, and to the *SFP Eligibility Determination* (Form SAB 50-03) instructions.

##### AUTHORITY

See Attachment A2a.

##### BACKGROUND

###### *Proposition 2 – Small School District New Construction Eligibility*

Among the provisions of Proposition 2, Education Code (EC) Section 17071.75, has been amended to extend the timeframe for adjusting small school district new construction enrollment projections from three years to five years, starting from the date the district's eligibility is approved by the State Allocation Board (Board).

SFP Regulation Section 1859.51 outlines adjustments to new construction baseline eligibility. Prior to the passage of Proposition 2, under SFP Regulation Section 1859.51(j), small school district's (schools with an enrollment of 2,500 students or fewer) new construction baselines may be adjusted/decreased by any reduction in projected enrollment that follows a three-year period after the district's eligibility was approved by the Board. The statutory amendments to EC necessitate this regulation to be amended to comply with the provisions of Proposition 2.

###### *Modernization Eligibility*

Under the SFP, modernization eligibility is site specific and based on the "age" of buildings on the school site. Age is determined by the date the Division of the State Architect (DSA) approves the plans for the building plus twelve months, or based on the date of the last modernization apportionment of state funding at the school site. Permanent buildings generate eligibility after 25 years and portable buildings generate eligibility after 20 years. Staff uses the ages of the building, in combination with site enrollment, to determine modernization eligibility.

*Proposition 2 – Modernization Eligibility for Schools on Military Installations*

Among the provisions of Proposition 2, EC Section 17073.15 has been amended to provide specified assistance to school districts that have a school facility located on a military installation that is recipient of a federal grant on the site for facilities modernization that requires a local matching share.

The added statutory amendments for these schools stipulate that these districts are eligible for an apportionment for the modernization of a permanent or portable building that is at least 10 years old, or is at least 10 years old after the date of the previous modernization apportionment from State funds under this chapter. Additionally, this provision outlines that any portable buildings modernized pursuant to this section shall be replaced with a permanent structure.

*SFP Regulation Sections 1859.60, 1859.61, and 1859.78.8, and 1859.79.2.*

Due to the statutory amendments of EC 17073.15, SFP Regulation Sections 1859.60, 1859.61, and 1859.78.8 must be amended in order to allow and clarify the new eligibility criteria. Section 1859.60 relates to the calculation to determine modernization baseline eligibility for each school site. Section 1859.61 relates to adjustments to the modernization baseline eligibility. Finally, Section 1859.78.8 relates to additional apportionments for facilities previously modernized with state funds. As the eligibility criteria resulting from the provisions of Proposition 2 for school districts with a school facility on a military installation that have a school facility located on a military installation and that is a recipient of a federal grant for facilities is not currently outlined within SFP Regulations, these sections are being updated to reflect current statutory requirements.

*SFP Grant Agreement*

A Grant Agreement (GA) is an agreement between OPSC and an applicant who is approved by the State Allocation Board (Board) to receive grants from the School Facility Program. An agreement is required for each approved funding application.

The purpose of the GA is to address audit findings by the state Office of Statewide Audits and Evaluation to improve oversight and accountability. It serves as a binding document that defines the responsibilities of districts and the state from the determination of the amount of eligible state funding to the reporting of all project funds. The GA includes lists that detail eligible project expenditures and ineligible project expenditures with the accompanying relevant statutory and regulatory authority.

To address eligibility for school sites on military installations and for small school districts, staff is presenting proposed amendments to the SFP Regulation Sections 1859.51, 1859.60, 1859.61, 1859.78.8, and 1859.79.2, as reflected in Attachment A2b.

## STAFF ANALYSIS/DISCUSSION

The proposed amendments to the SFP Regulations are summarized below for consideration in numerical order.

### **Summary of changes to SFP Regulation Section 1859.51, 1859.60, 1859.61, 1859.78.8, 1859.79.2, School Facility Program Eligibility Determination (Form SAB 50-03), and Grant Agreement.**

#### *SFP Regulation Section 1859.51 Adjustments to the New Construction Baseline Eligibility*

This regulation section outlines the criteria for adjusting a district's New Construction baseline eligibility, as determined on the Form SAB 50-03. Amendments to EC Section 17071.75 now allow school districts with an enrollment of 2,500 or fewer to "lock" their baseline eligibility for five years, rather than the previous three-year period, from the date of approval by the Board.

OPSC proposes that SFP Regulation Section 1859.51(j) be amended to reflect the new time period for school districts with enrollment that is 2,500 or fewer from a three-year lock to a five-year lock.

*SFP Regulation Section 1859.60 Calculation to Determine Modernization Eligibility*  
Proposition 2 provides specified assistance to school district with facilities on military installations. This specific assistance relates to school facilities on a military installation where the school district is a recipient of a federal grant for facilities modernization at the site that requires a local matching share.

This regulation section outlines parameters to the establishment of a site's Modernization eligibility baseline. Currently, regulations treat modernization eligibility criteria for school facilities on a military installation the same as any other school site. Currently, this section only outlines the criteria for determining the modernization eligibility baseline for permanent or portable facilities that are 25/20 years old.

Eligible school facilities on a military installation that meet the above criteria are eligible to receive an apportionment for the modernization of a permanent or portable building that is at least 10 years old, or is at least 10 years old after the date of the previous modernization apportionment under this chapter.

The proposed update mirrors language related to current regulation subsections (a) and (b) for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old after the plans for the building were approved by the Division of the State Architect (DSA). OPSC proposes that the determination of the age of the school facilities on military installations as beginning 12 months after the plans for the building were approved by DSA as well.

Amendments to this section includes the addition of subsections (c) and (d), which adds language for the determination of eligibility specific to school districts with school facilities on a military installation. Subsection (c) identifies all classrooms as the school site that are permanent at least 10 years old and portable at least 10 years old. Subsection (d) identifies all square footage at the school site that are permanent at least 10 years old and portable at least 10 years old.

Additional language has been updated to notate that for permanent or portable classrooms that were previously modernized with State funds and are located on a military installation, the 10 year period shall begin after the date of the previous modernization apportionment. Additionally, language has been included to mirror statute that portable buildings modernized pursuant to the additions of subsection (c) and (d) shall be replaced with a permanent structure.

*SFP Regulation Section 1859.61 Adjustments to the Modernization Baseline Eligibility*

This regulation outlines adjustments to the baseline eligibility for modernization, as provided in SFP Regulation Section 1859.60. Proposed amendments to this regulation include a shift in subsections, wherein what is currently listed as “l” will become “m”, and “l” is proposed to pertain to the adjustments to the modernization baseline eligibility for additional facilities located on a military installation pursuant to EC Section 17073.15(b). Specifically, the language stipulates that the baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows: “Increased... for additional facilities located on a military installation pursuant to EC Section 17073.15 not previously modernized with State funds, that become 10 years old, if permanent or portable.”

Additional proposed changes are to update language pertaining to prior subsection (l) to proposed subsection (m) for consistency.

Finally, additional language following the subsections has been added that specifies portable buildings modernized pursuant to subsection (d) shall be replaced with a permanent structure.

*SFP Regulation Section 1859.78.8 – Modernization Grant for Facilities Previously Modernized with State Funds*

This section provides the Board with regulatory authority to provide an additional apportionment provided by EC 17074.10(a) and SFP Regulation Section 1859.78.3, for facilities previously modernized with State funds. Two subsections have been added, subsection (c) and subsection (d), to reflect eligibility criteria for permanent and portable school facilities that are located on a military installation, pursuant to the criteria outlined in EC 17073.15.

*SFP Regulation Section 1859.79.2 – Use of Modernization Grant Funds*

This section provides guidelines for eligible and ineligible expenditures related to the use of Modernization Grant funds. Within this section, it is noted that some portable classrooms are eligible for additional funding, but only if they meet specific

conditions outlined in EC Sections 17073.15 and 17074.10(f). The proposed amendments to this section clarify that portable classroom facilities funded under EC Section 17073.15(b) are also included in the exception of portable classroom facilities eligible for an additional apportionment.

*Eligibility Determination (Form SAB 50-03) Instructions and Form*

OPSC proposes the *SFP Eligibility Determination* (Form SAB 50-03) instructions and Form to be amended, pursuant to the provisions of Proposition 2, related to eligibility determination for school facilities located on military installations that are a recipient of a federal grant for facilities modernization that requires a local matching share.

The intention with these updates to the Form SAB 50-03 is to align the Form instructions with the proposed amendments to SFP Regulation Section 1859.60, 1859.61, 1859.78.8, and 1859.79.2. These changes are reflected under General Information, Part III and Specific Instructions, Part III.

Additionally, in an effort to maintain the structure of the Form SAB 50-03 and have it function as an inclusive document for school districts with facilities on military installations pursuant to proposed SFP Regulation Section 1859.60.

Separate from the provisions of Proposition 2, OPSC proposes the inclusion of language within the instructions to include the specific CBEDS enrollment year under Options A and B. Under Specific Instructions, Part III Option A (number six) and Option B (number eight), “data and year” has been included in the instructions for reporting the latest California Basic Educational Data Systems (CBEDS) enrollment for the school site. On the Form, OPSC has included under Option A, line number six and Option B, line number eight, a space for school districts and county offices of education to include the specific enrollment year by which it is reporting for this site.

OPSC anticipates that the inclusion of an entry for the enrollment year used on the Form SAB 50-03 will streamline the verification process and allow for clearer verification of CBEDS enrollment being utilized on each Form SAB 50-03 being processed by OPSC.

*Grant Agreement – Section D. Modernization of Portable Classrooms*

OPSC proposes updating the Grant Agreement under Section D (Receiving Board Approval) for the component titled “Modernization of Portable Classrooms” to include language specific to the replacement of portable classrooms for school districts that have a school facility located on a military installation that is the recipient of a federal grant for facilities modernization that requires a local matching share.

This proposed update is anticipated to be presented with the overall changes to the eligible expenditure stakeholder item, Topic 3. As such, the proposed Grant Agreement section and summary of changes may be found within Attachment A3c.



OPSC anticipates presenting both of these topics to the Board at the same meeting.

Attachment A2b includes the proposed updates to the SFP Regulations and Attachment A2c includes the proposed changes *Eligibility Determination* (Form SAB 50-03). OPSC is requesting stakeholder feedback on these amendments.

## ATTACHMENT A2a

### AUTHORITY All Applications

#### **Education Code (EC) 17070.35 – General Provisions**

(a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

#### **SFP (SFP) Regulation Section 1859.51. Adjustments to the New Construction Baseline Eligibility.**

The baseline eligibility for new construction determined on the Form SAB 50-03 will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.162.2.

## ATTACHMENT A2a

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90, 1859.90.3 and 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts using a fifth-year projection or a tenth-year projection, except decreases as provided in (j) below.

For all funding requests received by OPSC on or after June 6, 2017, OPSC will notify the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04 and that the School District shall submit the Form SAB 50-01 based on school district enrollment data, as shown in the table below:

<b>OPSC Received Date of Form SAB 50-01</b>	<b>Enrollment Reporting Year</b>
July 1 through October 31	Submit Prior Fiscal Year Enrollment Data
November 1 through June 30	Submit Current Fiscal Year Enrollment Data

OPSC may return the Form SAB 50-04 to the School District for failure to submit the Form SAB 50-01 within 90 calendar days of OPSC's notification.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that affect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82.1(b)(4)(A) or 1859.82.2(b)(4)(A).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any Classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) That is a portable classroom, leased pursuant to Chapter 14 (commencing with Section 17085) of the Education Code.

(4) That is a portable classroom leased for a period of less than five years, whether in a single lease or cumulative total of several leases.

(5) That is a portable classroom that needs to be leased beyond five years to provide interim housing in a modernization or new construction project provided the cumulative lease term does not exceed a specified time period as determined by the SAB not to exceed three years on each qualifying project.

For this purpose, a project means all work contained in a single set of construction plans.

## ATTACHMENT A2a

(6) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(7) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(8) That was acquired with joint-use funds specifically available for that purpose.

(9) That was acquired with career technical education funds specifically available pursuant to Education Code Section 17078.72.

(10) That was built or acquired exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and with funds specifically available for those purposes.

(11) That replaces a classroom, previously included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a project funded by the district without participation from the State and the district permanently removes the replaced facility from classroom use immediately after the replacement classroom is occupied.

(12) That was constructed with Overcrowding Relief Grant funds specifically available for that purpose.

(j) For Small School Districts:

(1) Decreased by any reduction in projected enrollment that follows a three-year period after the district's eligibility was approved by the Board, and either (A) or (B), as applicable:

(A) Increased/decreased by changes in projected enrollment in the 2016/2017 enrollment year using a fifth-year projection or a tenth-year projection if the Form SAB 50-01 was received at OPSC by October 31, 2017.

(B) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years following 2016/2017 using a fifth-year projection or a tenth-year projection.

(2) If the Small School District does not submit an adjustment under (A) or (B) prior to OPSC notification of its schedule to begin processing the School District's request for new construction funding that was received by OPSC on or after November 1, 2012, then the requirements of (e) shall apply.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

(n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.166.

## ATTACHMENT A2a

- (o) Adjusted for operational grant changes as determined/provided by the California Department of Education.
- (p) For a HSAA district with Preliminary Apportionments within the 2002 or 2004 Critically Overcrowded School Facilities Account as follows:
  - (1) Decreased by the number of pupils that received a Preliminary Apportionment, distributed proportionately among HSAAs in which the pupils used to justify the conversion of the Preliminary Apportionment were enrolled but did not reside.
  - (2) In the subsequent enrollment reporting year after verification of Occupancy of a project, increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for the project which was occupied.
  - (3) Increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for a Preliminary Apportionment rescinded pursuant to the provisions of Section 1859.148.
- (q) Adjusted by the difference between the Alternative Enrollment Projection for the current enrollment reporting year and the projected enrollment determined pursuant to Section 1859.42 for the current enrollment reporting year, or by the eligibility remaining from this calculation that can no longer be utilized if the funds made available pursuant to Education Code Section 17071.75(a)(1)(A) have been exhausted.
- (r) Adjusted pursuant to Education Code Section 17071.75(b)(2) by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom(s) where title was relinquished to the School District receiving the transferred classroom(s).
- (s) Increased by the capacity of classrooms that meet all of the following:
  - (1) The classrooms are included in an Approved Application that have a qualifying health and safety threat pursuant to Sections 1859.82.1 or 185.9.82.2 that were originally included in the district's baseline eligibility, except the district did not have the current enrollment to support the replacement and funding of those classrooms.
  - (2) The classrooms are included in an Approved Application pursuant to Sections 1859.82.1 or 1859.82.2 and did not receive funding as part of that project and were demolished or removed from classroom use. Buildings removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.
  - (3) The Board shall approve the adjustment upon receiving the local school board resolution acknowledging that the buildings have been removed from K-12 classroom use.

### **SFP Regulation Section 1859.60. Calculation to Determine Modernization Baseline Eligibility.**

The district shall calculate its modernization eligibility for each school site with the completion of the Form SAB 50-03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

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(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

- (1) Permanent and at least 25 years old.
- (2) Portable and at least 20 years old.
- (3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

- (1) Permanent area and at least 25 years old.
- (2) Portable classroom area and at least 20 years old.
- (3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall begin 12 months after the plans for the building were approved by the DSA; or in the case of permanent or portable classrooms that were previously modernized with State funds or rehabilitated under the Charter School Facilities Program, the 25/20 year period shall begin on the date of its previous apportionment. For purposes of identifying square footage at a school site, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the Form SAB 50-03, shall be referred to as the modernization baseline eligibility for the specific school site.

### **SFP Regulation Section 1859.61. Adjustments to the Modernization Baseline Eligibility.**

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization SFP project or a CSFP Rehabilitation project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Sections 1859.90, 1859.90.3 and 1859.105.
- (e) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

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- (g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (i) Increased for facilities previously modernized with State funds, which qualify for an additional modernization apportionment pursuant to Section 1859.78.8.
- (j) Decreased for facilities that were deemed eligible for modernization pursuant to Sections 1859.60 and 1859.61(d) and subsequently replaced, or will be replaced under a signed contract for construction or acquisition of facilities, in a project funded by the district without participation from the State.
- (k) Adjusted as a result of replaced eligible portables funded with the Overcrowding Relief Grant, pursuant to Education Code Section 17079, et seq.
- (l) Adjusted upon Board receipt of the local school board resolution acknowledging that the buildings have been removed from K-12 use, as follows:
  - (1) School Buildings and/or classrooms that receive replacement funding via the New Construction Grant or the Facility Hardship Square Footage Grant pursuant to Section 1859.82.1 or Section 1859.82.2
  - (2) School Buildings and/or classrooms that were originally included in the district's baseline eligibility and were later demolished or removed from classroom use due to health and/or safety concerns that meet the requirements of Regulation Section 1859.82.1 or 1859.82.2 as verified by OPSC, except the district did not have the current enrollment to support the replacement and funding of those School Buildings and/or classrooms. Buildings and/or classrooms removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.

For (l)(1) the building age shall be reset to the date of the Apportionment for the corresponding project. For (l)(2) the building shall be removed from the classroom inventory used to establish modernization eligibility at the site.

### **SFP Regulation Section 1859.78.8. Modernization Grant for Facilities Previously Modernized with State Funds.**

The Board shall provide an additional apportionment provided by Education Code 17074.10(a) and Section 1859.78.3, for facilities previously modernized with State funds as follows:

- (a) An additional apportionment will be provided for the modernization of a permanent school building every 25 years following the date of its previous State modernization apportionment.
- (b) In the case of portable classrooms, an additional apportionment will be permitted every 20 years after the date of its previous State modernization apportionment provided the modernization funds will be used to replace the portable classroom(s) and the school district must certify that the portable classrooms will be removed from any classroom use unless acceptable documentation is provided by the district indicating that the modernization of the portable classrooms is a better use of public resources.

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(c) In the case of permanent school facilities that are located on a military installation, an additional apportionment will be provided for the modernization of a permanent school building every 10 years following the date of its previous State modernization apportionment.

(d) In the case of portable school classrooms that are located on a military installation, an additional apportionment will be provided for the replacement of the portable classrooms with a permanent structure.

If the previous SFP modernization apportionment includes both permanent and portable facilities, the number of pupil grants that will be added to the site's baseline eligibility shall be determined by the percentage of permanent or portable facilities identified on the Form SAB 50-03 that generated the initial eligibility.

The capacity and eligibility of the school district will not be adjusted for the replacement of the portable classroom pursuant to Education Code Sections 17074.10(f) and 17073.15.

### **SFP Regulation Section 1859.79.2. Use of Modernization Grant Funds.**

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(i) and may also be utilized for other purposes as set forth in Education Code Section 100420(c), and Labor Code Section 1771.3(a) in effect on January 1, 2012 through June 19, 2014. Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated.

The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.



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Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

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### AUTHORITY

Applications Received on or after October 31, 2024

#### **EC Section 17071.75 – New Construction Eligibility Determination**

After a one-time initial report of existing school building capacity has been completed, the ongoing eligibility of a school district for new construction funding shall be determined by making all of the following calculations:

(a) A school district that applies to receive funding for new construction shall use the following methods to determine projected enrollment:

(1) A school district that has two or more schoolsites each with a pupil population density that is greater than 115 pupils per acre in kindergarten and grades 1 to 6, inclusive, or a schoolsite pupil population density that is greater than 90 pupils per acre in grades 7 to 12, inclusive, as determined by the Superintendent using enrollment data from the California Basic Educational Data System for the 2004–05 school year, may submit an application for funding for projects that will relieve overcrowded conditions. That school district may also submit an alternative enrollment projection for the fifth year beyond the fiscal year in which the application is made using a methodology other than the cohort survival enrollment projection method, as defined by the board pursuant to paragraph (2), to be reviewed by the Demographic Research Unit of the Department of Finance, in consultation with the department and the Office of Public School Construction. If the Office of Public School Construction and the Demographic Research Unit of the Department of Finance jointly determine that the alternative enrollment projection provides a reasonable estimate of expected enrollment demand, a recommendation shall be forwarded to the board to approve or disapprove the application, in accordance with all of the following:

(A) Total funding for new construction projects using this method shall be limited to five hundred million dollars (\$500,000,000), from the Kindergarten-University Public Education Facilities Bond Act of 2004.

(B) The eligibility amount for proposed projects that relieve overcrowding is the difference between the alternative enrollment projection method for the year the application is submitted and the cohort survival enrollment projection method, as defined by the board pursuant to paragraph (2), for the same year, adjusted by the existing pupil capacity in excess of the projected enrollment according to the cohort survival enrollment projection method.

(C) The Office of Public School Construction shall determine whether each proposed project will relieve overcrowding, including, but not limited to, the elimination of the use of Concept 6 calendars, four track year-round calendars, or busing in excess of 40 minutes, and recommend approval to the board. The number of unhoused pupil grants requested in the application for funding from the eligibility determined pursuant to this paragraph shall be limited to the number of seats necessary to relieve overcrowding, including, but not limited to, the elimination of the use of Concept 6 calendars, four track year-round calendars, or busing in excess of 40 minutes, less the number of unhoused

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pupil grants attributed to that school as a source school in an approved application pursuant to Section 17078.24.

(D) A school district shall use the same alternative enrollment projection methodology for all applications submitted pursuant to this paragraph and shall calculate those projections in accordance with the same districtwide or high school attendance area used for the enrollment projection made pursuant to paragraph (2).

(2) A school district shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by using the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection with any of the following:

(A) The number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(B) Modified weighting mechanisms, if the board determines that they best represent the enrollment trends of the district. Mechanisms pursuant to this subparagraph shall be developed and applied in consultation with the Demographic Research Unit of the Department of Finance.

(C) An adjustment to reflect the effects on kindergarten and first grade enrollment of changes in birth rates within the school district or high school attendance area boundaries.

(3) (A) A school district may submit an enrollment projection for either a 5th year or a 10th year beyond the fiscal year in which the application is made. A school district that bases its enrollment projection calculation on a high school attendance area may use pupil residence in that attendance area to calculate enrollment. A school district that uses pupil residence shall do so for all high school attendance areas within the district. A pupil shall not be included in a high school attendance area enrollment projection based on pupil residence unless that pupil was included in the California Basic Educational Data System (CBEDS) report of the district for the same enrollment year. The board may require a district to provide a reconciliation of the districtwide CBEDS and residency data. The board also may adopt regulations to specify the format and certification requirements for a school district that submits residency data.

(b) (1) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant school district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for whom facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for whom facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(2) Subtract from the number of pupils calculated in paragraph (1) the number of pupils that were housed in facilities to which the school district or county office of education relinquished title as the result of a transfer of a special education program between a school district and a county office of education or special education local plan area, if applicable. For this purpose, the total

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number of pupils that were housed in the facilities to which title was relinquished shall be determined using the pupil loading formula adopted by the board pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 17071.25. For purposes of this paragraph, title also includes any lease interest with a duration of greater than five years.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to paragraph (2) of subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to former Section 42268, as that section read on June 30, 2013, and the report used in determining the baseline capacity of the school district pursuant to subdivision (a) of Section 17071.25.

(f) For purposes of calculating projected enrollment pursuant to subdivision (a), the board may adopt regulations to ensure that the enrollment calculation of individuals with exceptional needs receiving special education services is adjusted in the enrollment reporting period in which the transfer occurs and three previous school years as a result of a transfer of a special education program between a school district and a county office of education or a special education local plan area. However, the projected enrollment calculation of a county office of education shall only be adjusted if a transfer of title for the special education program facilities has occurred. The regulations, if adopted, shall ensure that if a transfer of title to special education program facilities constructed with state funds occurs within 10 years after initial occupancy of the facility, the receiving school district or school districts shall remit to the state a proportionate share of any financial hardship assistance provided for the project pursuant to Section 17075.10, if applicable.

(g) For a school district with an enrollment of 2,500 or fewer, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of five years from the date of the approval of eligibility by the board.

*(Amended by Stats. 2024, Ch. 81, Sec. 12. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

### **EC Section 17073.15 – Modernization Eligibility Determination**

(a) A school district is eligible to receive an apportionment for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old. A school district is eligible to receive an additional apportionment for the modernization of a permanent school building every 25 years after the date of the previous apportionment or a portable classroom every 20 years after the previous apportionment.

(b) (1) Notwithstanding subdivision (a), a school district that has a school facility located on a military installation that is the recipient of a federal grant for facilities modernization that requires a local matching share is eligible to

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receive an apportionment for the modernization of a permanent or portable building that is at least 10 years old, or is at least 10 years old after the date of the previous modernization apportionment under this chapter.

(2) Portable buildings modernized pursuant to paragraph (1) shall be replaced with a permanent structure.

*(Amended by Stats. 2024, Ch. 81, Sec. 9. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

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### PROPOSED REGULATIONS

#### Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03 will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.162.2.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90, 1859.90.3 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts using a fifth-year projection or a tenth-year projection, except decreases as provided in (j) below.

For all funding requests received by OPSC on or after June 6, 2017, OPSC will notify the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04 and that the School District shall submit the Form SAB 50-01 based on school district enrollment data, as shown in the table below:

OPSC Received Date of Form SAB 50-01	Enrollment Reporting Year
July 1 through October 31	Submit Prior Fiscal Year Enrollment Data
November 1 through June 30	Submit Current Fiscal Year Enrollment Data

OPSC may return the Form SAB 50-04 to the School District for failure to submit the Form SAB 50-01 within 90 calendar days of OPSC's notification.

- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82.1(b)(4)(A) or 1859.82.2(b)(4)(A).
- (i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any Classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:
  - (1) That is a trailer and transportable/towed on its own wheels and axles.
  - (2) Of less than 700 interior square feet.
  - (3) That is a portable classroom, leased pursuant to Chapter 14 (commencing with Section 17085) of the Education Code.
  - (4) That is a portable classroom leased for a period of less than five years, whether in a single lease or cumulative total of several leases.
  - (5) That is a portable classroom that needs to be leased beyond five years to provide interim housing in a modernization or new construction project provided the cumulative lease term does not exceed a specified time period as determined by the SAB Board not to exceed three years on each qualifying project. For this purpose, a project means all work contained in a single set of construction plans.
  - (6) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
  - (7) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.
  - (8) That was acquired with joint-use funds specifically available for that purpose.
  - (9) That was acquired with career technical education funds specifically available pursuant to Education Code Section 17078.72.

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- (10) That was built or acquired exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and with funds specifically available for those purposes.
- (11) That replaces a classroom, previously included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a project funded by the district without participation from the State and the district permanently removes the replaced facility from classroom use immediately after the replacement classroom is occupied.
- (12) That was constructed with Overcrowding Relief Grant funds specifically available for that purpose.
  - (j) For Small School Districts:
    - (1) Decreased by any reduction in projected enrollment that follows a ~~three~~ five-year period after the district's eligibility was approved by the Board, and either (A) or (B), as applicable:
      - (A) Increased/decreased by changes in projected enrollment in the 2016/2017 enrollment year using a fifth-year projection or a tenth-year projection if the Form SAB 50-01 was received at OPSC by October 31, 2017.
      - (B) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years following 2016/2017 using a fifth-year projection or a tenth-year projection.
    - (2) If the Small School District does not submit an adjustment under (A) or (B) prior to OPSC notification of its schedule to begin processing the School District's request for new construction funding that was received by OPSC on or after November 1, 2012, then the requirements of (e) shall apply.
  - (k) Adjusted for any change in classroom inventory as a result of a reorganization election.
  - (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
  - (m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
  - (n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.166.
  - (o) Adjusted for operational grant changes as determined/provided by the California Department of Education.
  - (p) For a HSAA district with Preliminary Apportionments within the 2002 or 2004 Critically Overcrowded School Facilities Account as follows:
    - (1) Decreased by the number of pupils that received a Preliminary Apportionment, distributed proportionately among HSAAs in which the pupils used to justify the conversion of the Preliminary Apportionment were enrolled but did not reside.
    - (2) In the subsequent enrollment reporting year after verification of Occupancy of a project, increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for the project which was occupied.
    - (3) Increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for a Preliminary Apportionment rescinded pursuant to the provisions of Section 1859.148.
  - (q) Adjusted by the difference between the Alternative Enrollment Projection for the current enrollment reporting year and the projected enrollment determined pursuant to Section 1859.42 for the current enrollment reporting year, or by the eligibility remaining from this calculation that can no longer be utilized if the funds made available pursuant to Education Code Section 17071.75(a)(1)(A) have been exhausted.
  - (r) Adjusted pursuant to Education Code Section 17071.75(b)(2) by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom(s) where title was relinquished to the School District receiving the transferred classroom(s).
  - (s) Increased by the capacity of classrooms that meet all of the following:
    - (1) The classrooms are included in an Approved Application that have a qualifying health and safety threat pursuant to Sections 1859.82.1 or 185.9.82.2 that were originally included in the district's baseline eligibility, except the district did not have the current enrollment to support the replacement and funding of those classrooms.
    - (2) The classrooms are included in an Approved Application pursuant to Sections 1859.82.1 or 1859.82.2 and did not receive funding as part of that project and were demolished or removed from classroom use. Buildings removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.
  - (3) The Board shall approve the adjustment upon receiving the local school board resolution acknowledging that the buildings have been removed from K-12 classroom use.

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Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20, 42268, and 42270, Education Code.

### Section 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its modernization eligibility for each school site with the completion of the Form SAB 50-03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

- (a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:
  - (1) Permanent and at least 25 years old.
  - (2) Portable and at least 20 years old.
  - (3) The remaining classrooms not reported in (1) or (2) above.
- (b) Identify all square footage at the school site that is:
  - (1) Permanent area and at least 25 years old.
  - (2) Portable classroom area and at least 25 years old.
  - (3) The remaining square footage on the site not reported in (1) or (2) above.
- (c) Identify all classrooms at the school site located on a military installation where the site is a recipient of a federal grant for facilities modernization that requires a local matching share that are:
  - (1) Permanent at least 10 years old.
  - (2) Portable at least 10 years old.
- (d) Identify all square footage at the school site located on a military installation where the site is a recipient of a federal grant for facilities modernization that requires a local matching share that are:
  - (1) Permanent at least 10 years old.
  - (2) Portable at least 10 years old.

The age of the classroom or square footage shall begin 12 months after the plans for the building were approved by the DSA; ~~or in~~ in the case of permanent or portable classrooms that were previously modernized with State funds or rehabilitated under the Charter School Facilities Program, the 25/20 year period shall begin on the date of its previous apportionment. For permanent or portable classrooms that were previously modernized with State funds and are located on a military installation, pursuant to subsection (c) and (d), the 10 year period shall begin after the date of the previous modernization apportionment. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Portable buildings modernized pursuant to subsection (c) and (d) shall be replaced with a permanent structure.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the Form SAB 50-03, shall be referred to as the modernization baseline eligibility for the specific school site.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.



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### Section 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization SFP project or a CSFP Rehabilitation project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Sections 1859.90, 1859.90.3, and 1859.105.
- (e) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.
- (g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (i) Increased for facilities previously modernized with State funds, which qualify for an additional modernization apportionment pursuant to Section 1859.78.8 or EC Section 17073.15(b).
- (j) Decreased for facilities that were deemed eligible for modernization pursuant to Sections 1859.60 and 1859.61(d) and subsequently replaced, or will be replaced under a signed contract for construction or acquisition of facilities, in a project funded by the district without participation from the State.
- (k) Adjusted as a result of replaced eligible portables funded with the Overcrowding Relief Grant, pursuant to Education Code Section 17079, et seq.
- (l) Increased for additional facilities located on a military installation pursuant to EC Section 17073.15(b) not previously modernized with State funds, that become 10 years old, if permanent or if portable. Portable buildings modernized pursuant to this subsection shall be replaced with a permanent structure.
- (lm) Adjusted upon Board receipt of the local school board resolution acknowledging that the buildings have been removed from K-12 use, as follows:
  - (1) School Buildings and/or classrooms that receive replacement funding via the New Construction Grant or the Facility Hardship Square Footage Grant pursuant to Section 1859.82.1 or Section 1859.82.2
  - (2) School Buildings and/or classrooms that were originally included in the district's baseline eligibility and were later demolished or removed from classroom use due to health and/or safety concerns that meet the requirements of Regulation Section 1859.82.1 or 1859.82.2 as verified by OPSC, except the district did not have the current enrollment to support the replacement and funding of those School Buildings and/or classrooms. Buildings and/or classrooms removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.

For (lm)(1), the building age shall be reset to the date of the Apportionment for the corresponding project. For (lm)(2) the building shall be removed from the classroom inventory used to establish modernization eligibility at the site.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.51, 17071.25, 17072.15, 17072.20, 17073.15, 17074.10, 17075.10 and 17079.30, Education Code.

## ATTACHMENT A2b

### Section 1859.78.8. Modernization Grant for Facilities Previously Modernized with State Funds.

The Board shall provide an additional apportionment provided by Education Code 17074.10(a) and Section 1859.78.3, for facilities previously modernized with State funds as follows:

- (a) An additional apportionment will be provided for the modernization of a permanent school building every 25 years following the date of its previous State modernization apportionment.
- (b) In the case of portable classrooms, an additional apportionment will be permitted every 20 years after the date of its previous State modernization apportionment provided the modernization funds will be used to replace the portable classroom(s) and the school district must certify that the portable classrooms will be removed from any classroom use unless acceptable documentation is provided by the district indicating that the modernization of the portable classrooms is a better use of public resources.
- (c) In the case of permanent school facilities that are located on a military installation and are pursuant to the criteria in Education Code 17073.15(b), an additional apportionment will be provided for the modernization of a permanent school building every 10 years following the date of its previous State modernization apportionment.
- (d) In the case of portable school classrooms that are located on a military installation and are pursuant to the criteria in Education Code 17073.15(b), an additional apportionment will be provided for the replacement of the portable classrooms with a permanent structure. Portable buildings modernized pursuant to this subsection shall be replaced with a permanent structure.

If the previous SFP modernization apportionment includes both permanent and portable facilities, the number of pupil grants that will be added to the site's baseline eligibility shall be determined by the percentage of permanent or portable facilities identified on the Form SAB 50-03 that generated the initial eligibility.

The capacity and eligibility of the school district will not be adjusted for the replacement of the portable classroom pursuant to Education Code Sections 17074.10(f) and 17073.15.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17074.10 and 17073.15, Education Code.

### Section 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(i) and may also be utilized for other purposes as set forth in Education Code Section 100420(c), and Labor Code Section 1771.3(a) in effect on January 1, 2012 through June 19, 2014. Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
  - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
  - (2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
  - (1) Replacement, repair or additions to existing site development.
  - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

## ATTACHMENT A2b

Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8, or portables funded pursuant to Education Code Section 17073.15(b). If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code, and Section 1771.3 in effect on January 1, 2012 through June 19, 2014, Labor Code.

**ELIGIBILITY DETERMINATION  
SCHOOL FACILITY PROGRAM**SAB 50-03 (REV ~~12/10~~ xx/25)**GENERAL INFORMATION**

This form is used by the School District to calculate the district's eligibility for new construction and modernization funding under the School Facility Program (SFP). The business address entered on the application should be the location that the school district wishes the Office of Public School Construction (OPSC) to mail all correspondence regarding this application.

**Part I**

Complete to designate or change the authorized district representative and/or alternate. Should this be the case, complete the school district information, identify the district representative(s) in Part I and complete the district certification information at the bottom of the form, including the date the district's governing board took appropriate action.

**Part II**

Complete for new construction baseline eligibility determination. This part is also used to request an adjustment to an approved new construction baseline eligibility as a result of subdivisions (f), (k) and (l) of Section 1859.51 due to either errors or omissions of information submitted by the district when it requested the initial baseline eligibility, because of a reorganization election that has changed the classroom inventory of the district or to change the classroom inventory that was reported at the time the district requested its initial determination of existing school building capacity as a result of special day class loading. The following documentation is necessary to determine new construction baseline eligibility and must be submitted with this form:

- A completed Form SAB 50-01 based on the latest enrollment data.
- A completed Form SAB 50-02.

**Part III**

Complete for modernization baseline eligibility determination at a specific site. Districts must be able to provide a drawing of the site where eligibility for modernization is generated with its request for an eligibility determination. The drawing must identify all permanent and portable classrooms on the site and their ages. If the district intends to use the square footage method in Option B, the drawings must also identify the square footage of all facilities on the site.

Part III is also used to request an adjustment to the approved baseline eligibility at a specific site as a result of subdivisions (c), (d), (e), (g), (i), and (k) of Section 1859.61 due to one or more of the following:

- an increase in enrollment,
- additional facilities becoming at least 20/25 years old,
- additional facilities on a site located on a military installation\* becoming at least 10 years old.
- facilities becoming eligible for an additional modernization apportionment, for permanent school buildings every 25 years after the date of its previous apportionment or for portable classrooms every 20 years after the date of its previous apportionment,
- facilities located on a military installation\* where the school district is
- a recipient of a federal grant on the site for facilities modernization
- that requires a local matching share become eligible for an additional

modernization apportionment, for permanent school buildings every 10 years after the date of its previous apportionment or for portable classrooms 10 years after the date of its previous apportionment.

- because of errors or omissions of information submitted by the district when it requested the initial baseline eligibility for the site, or
- to change the classroom inventory that was reported at the time the district requested its initial determination of existing school building capacity as a result of special day class loading,
- a replacement of a facility that was previously deemed eligible for modernization but subsequently replaced in a project funded with local funds with no participation from the State. The district should submit a site diagram indicating the replaced facilities and a copy of the contract for construction or acquisition of facilities.

The following documentation is necessary (if not previously submitted to the OPSC) to determine modernization baseline eligibility and must be submitted with this form (as appropriate):

- Site diagram of school where modernization funding is requested. The diagram must indicate the ages and number of all permanent and portable classrooms on the site in accordance with the gross classroom inventory as provided by Section 1859.31.
- If the modernization eligibility will be determined by Option B, the site drawings must also include square footage and/or dimensions of all buildings on the site.

It is not necessary to complete Part III if the district is only requesting funding for new construction and it is not necessary to complete Part II if the district is only requesting funding for modernization.

A district may request that eligibility for new construction or modernization be reviewed and approved by the Board pursuant to Section 1859.20 prior to submitting Form SAB 50-04 to the Board.

For a list of the documents that must be submitted in order for the OPSC to deem an eligibility request for new construction or modernization complete and ready for OPSC processing, consult the OPSC Web site at [www.dgs.ca.gov/opsc](http://www.dgs.ca.gov/opsc).

**SPECIFIC INSTRUCTIONS****Part I – District Representative Information**

Enter the name(s) of district employee(s) that can act on behalf of the district's board. A consultant who is on contract with the district to communicate with the OPSC on behalf of the district's board may be listed. The designee of the Superintendent of Public Instruction shall file modernization applications on behalf of the California Schools for the Deaf and Blind.

**Part II – New Construction Eligibility Determination**

Indicate if this request is for a new or adjusted eligibility determination. Enter the district-wide information unless filing on a High School Attendance Area (HSAA) or Super HSAA basis. The enrollment projection and the existing school building capacity data are obtained from information reported and determined on the Form SAB 50-01 and the Form SAB 50-02. Once the OPSC has verified the information provided on these forms, it will automatically be

**ELIGIBILITY DETERMINATION  
SCHOOL FACILITY PROGRAM**

SAB 50-03 (REV 12/10 xx/25)

transferred to this form to determine the district's eligibility for new construction. The district may manually enter the information from these forms and compute its eligibility; however, it may be adjusted by the OPSC based on verification of Form SAB 50-01 and Form SAB 50-02.

1. Enter either the fifth-year or the tenth-year projected enrollment as shown in Part I of Form SAB 50-01 for grades K–6, 7–8, 9–12 and for the total of non-severe and severe special day class (SDC) projected enrollment. Enter the amounts on Form SAB 50-02, Part III, line 3 for grades K–6, 7–8, 9–12, non-severe and severe.
2. New construction eligibility (i.e., the "baseline eligibility") is determined by subtracting the existing school building capacity (line 2) from the projected five year enrollment (line 1). Report negative numbers in brackets.

Adjustments to the district's new construction baseline eligibility will be made by the OPSC pursuant to Section 1859.51. Contact your project manager at the OPSC for the adjusted baseline eligibility for future request for new construction grants.

**Part III – Modernization Eligibility Determination**

Modernization eligibility is calculated based on information at a specific site when modernization SFP grants are requested within the district. Therefore, completion of Form SAB 50-01 and Form SAB 50-02 are not needed to determine eligibility for modernization funding. Since the eligibility is site specific, the district must submit a separate Form SAB 50-03 for each site for which it is requesting modernization funding. Indicate if this request is for new baseline eligibility determination or for an adjustment to an approved baseline eligibility as a result of Section 1859.61.

The district may use one of two options to calculate its modernization eligibility at a specific site within the district. The district may select only one option at a time to calculate its modernization eligibility at any given school site. The district may switch options at a later date, if it results in a net gain in eligibility at the site, regardless of whether a funding application has been submitted. Hence, for purposes of adjusting modernization eligibility to include non-classroom buildings previously modernized under the Lease-Purchase Program, a district may switch options for the purposes of obtaining additional modernization apportionments as provided by Section 1859.78.8. To assure timely processing of the application, districts must provide a drawing of the site (if not previously submitted to the OPSC) where modernization funds are generated with the eligibility request to the OPSC. The drawing must identify all permanent and portable classrooms and their ages on the site. If the square footage of Option B is selected, the drawings must also identify the square footages of all facilities on the site. For purposes of determining the age of the building for modernization funding, the 25/20 year period shall begin 12 months after the plans for the building were approved by the Division of the State Architect (DSA); or in the case of permanent or portable classrooms previously modernized with State funds, which are eligible for an additional apportionment, the 25/20 year period shall begin on the date of its previous modernization apportionment. For purposes of determining the age of buildings located on a military installation\*, the 10 year period shall begin 12 months after the plans for the building

were approved by the DSA; or in the case of permanent or portable classrooms previously modernized with State funds, which are eligible for an apportionment, the 10 year period shall begin on the date of its previous modernization apportionment. Any drawing that includes classrooms eligible for an additional apportionment pursuant to Section 1859.78.8 should specify both the date the classroom's plans were originally approved by the DSA and the date of its previous modernization apportionment.

1. Enter the school site name from the California Public School Directory published by the California Department of Education.

**Option A**

2. Enter the number of permanent classrooms by grade level at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are at least 25 years old and include any permanent classrooms not previously reported that have become at least 25 years old, or if the classrooms are located on a military installation, enter the number of permanent classrooms by grade level that are at least 10 years old and include any permanent classrooms not previously reported that have become at least 10 years old\*. If the school is a 6–8 middle school only, then report all classrooms at the 7–8 grade level. If this request is to adjust the classrooms reported for non-severe or severe pupil loading, the total classrooms reported must be equal to the classrooms reported at the time of the district request for initial modernization baseline eligibility. In no event may the number of classrooms reported for non-severe or severe pupils exceed the number of classrooms needed to house non-severe and severe pupils as reported on line 6 using loading standards of 13 for non-severe and 9 for severe classrooms. For purposes of the California Schools for the Deaf and Blind, the loading standard for these severe pupils shall be 9.
3. Enter the total number of portable classrooms by grade level at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are at least 20 years old and include any portable classrooms not previously reported that have become at least 20 years old, or if the classrooms are located on a military installation\*, enter the number of portable classrooms by grade level that are at least 10 years old and include any portable classrooms not previously reported that have become at least 10 years old. If the school is a 6–8 middle school only, then report all classrooms at the 7–8 grade level. If this request is to adjust the classrooms reported for non-severe or severe pupil loading, the total classrooms reported must be equal to the classrooms reported at the time of the district request for initial modernization baseline eligibility. In no event may the number of classrooms reported for non-severe or severe pupils exceed the number of classrooms needed to house non-severe and severe pupils as reported on line 6 using loading standards of 13 for non-severe and 9 for severe classrooms.
4. Add lines 2 and 3 by the grades shown.
5. Multiply line 4 by 25 for K–6, 27 for 7–8 and 9–12, 13 for non-severe and 9 for severe.
6. Enter the latest California Basic Educational Data Systems (CBEDS) enrollment data and year for the school site identified as it would have been reported utilizing the criteria in Parts A, C and D of Form

**ELIGIBILITY DETERMINATION  
SCHOOL FACILITY PROGRAM**SAB 50-03 (REV ~~12/10~~ xx/25)

- SAB 50-01. Report continuation high pupils as 9–12. If the school is a 6–8 middle school only, report 6th graders as 7–8.
7. Modernization eligibility (i.e., the baseline eligibility) is the lesser of each column of lines 5 or 6.

**Option B**

2. Enter the total number of permanent classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 or all permanent square footage at the site that is at least 25 years old.
3. Enter the total number of portable classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 or all portable square footage at the site that is at least 20 years old pursuant to Section 1859.60.
4. Add lines 2 and 3.
5. Enter the remaining number of permanent and portable classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 or all remaining permanent or portable space that is under 25/20 years old.
6. Add lines 4 and 5.
7. Determine the percentage of space on the site that is at least 25/20 years old by (1) dividing Line 4 by Line 6, (2) round to four decimal places, and (3) then convert to a percentage with two decimal

places. For spaces located on military installations\*, determine the percentage of space that is at least 10 years old by (1) dividing Line 4 by Line 6, (2) round to four decimal places, and (3) then convert to a percentage with two decimal places.

8. Enter the latest CBEDS enrollment data and year for each grade group at the school site identified as it would have been reported utilizing the criteria in Parts A, C and D of Form SAB 50-01. Report continuation high pupils as 9-12. If the school is a 6-8 middle school only, report 6<sup>th</sup> graders as 7-8.
9. Modernization eligibility (i.e., the baseline eligibility) is determined by multiplying line 7 by each grade group reported in line 8. Round up.

Adjustments to the Districts modernization baseline eligibility will be made pursuant to Section 1859.61. These adjustments will be made by the OPSC. Contact your project manager at OPSC for the adjusted baseline eligibility for future requests for modernization grants at the specific site.

\* For purposes of this Form SAB 50-03, any classrooms or spaces referred to as on military installations, must meet the criteria pursuant to Section 1859.60(c) and (d), wherein the site is a recipient of a federal grant for facilities modernization that requires a local matching share.

STATE OF CALIFORNIA

**ELIGIBILITY DETERMINATION  
SCHOOL FACILITY PROGRAM**SAB 50-03 (REV ~~12/10~~ xx/25)STATE ALLOCATION BOARD  
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

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SCHOOL DISTRICT	FIVE-DIGIT DISTRICT CODE NUMBER (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
BUSINESS ADDRESS	HIGH SCHOOL ATTENDANCE AREA (HSAA) OR SUPER HSAA (IF APPLICABLE)
CITY/COUNTY	

**Part I – District Representative Information**

The following individual(s) have been designated as district representative(s) by school board minutes or the designee of the Superintendent of Public Instruction:

DISTRICT REPRESENTATIVE	TELEPHONE NUMBER	E-MAIL ADDRESS
DISTRICT REPRESENTATIVE	TELEPHONE NUMBER	E-MAIL ADDRESS

**Part II – New Construction Eligibility Determination** ☐ NEW ☐ ADJUSTED

	K-6	7-8	9-12	Non-Severe	Severe
1. Projected Enrollment (Part I, Form SAB 50-01)					
2. Existing School Building Capacity (Part III, Line 3 of Form SAB 50-02)					
3. New Construction Baseline Eligibility (Line 1 minus Line 2)	0	0	0	0	0

**Part III – Modernization Eligibility Determination** ☐ NEW ☐ ADJUSTED

1. School Name					
<b>Option A</b>	<b>K-6</b>	<b>7-8</b>	<b>9-12</b>	<b>Non-Severe</b>	<b>Severe</b>
2. Permanent classrooms at least 25 years old*					
3. Portable classrooms at least 20 years old*					
4. Total (Lines 2 and 3)	0	0	0	0	0
5. Multiply Line 4 by: 25 for K-6, 27 for 7-8 and 9-12, 13 for Non-Severe and 9 for Severe	0	0	0	0	0
6. CBEDS enrollment <u>and</u> year _____ at school <u>site</u>					
7. Modernization Eligibility (lesser of each column of Lines 5 or 6)	0	0	0	0	0

**Option B**

2. Permanent space at least 25 years old <u>or on military installations at least 10 years old*</u> (report by classroom or square footage)					
3. Portable space at least 20 years old <u>or on military installations at least 10 years old*</u>					
4. Total (Lines 2 and 3)	0.00				
5. Remaining permanent and portable space (report by classroom or square footage)					
6. Total (Lines 4 and 5)	0.00				
7. Percentage (divide Line 4 by Line 6)	0.00%				
	<b>K-6</b>	<b>7-8</b>	<b>9-12</b>	<b>Non-Severe</b>	<b>Severe</b>
8. CBEDS enrollment <u>and</u> year _____ at school <u>site</u>					
9. Modernization Eligibility (multiply Line 7 by each grade group reported on Line 8)	0	0	0	0	0

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized district representative by the governing board of the district or the designee of the Superintendent of Public Instruction; and,
- \*This site is located on a military installation that is a recipient of a federal grant for facilities modernization that requires a local matching share; and,
- A resolution or other appropriate documentation supporting this application under Chapter 12.5, Part 10, Division 1, commencing with Section 17070.10, et seq., of the Education Code was adopted by the School District's Governing Board or the designee of the Superintendent of Public Instruction on \_\_\_\_\_; and,
- This form is an exact duplicate (verbatim) of the form provided by Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
NAME OF DISTRICT REPRESENTATIVE (PRINT OR TYPE)	E-MAIL ADDRESS
	TELEPHONE

## ATTACHMENT A3

### OFFICE OF PUBLIC SCHOOL CONSTRUCTION STAKEHOLDER MEETING January 30, 2025

#### PROPOSED REGULATORY AMENDMENTS FOR ELIGIBLE EXPENDITURES UNDER THE SCHOOL FACILITY PROGRAM

##### PURPOSE

To discuss and receive stakeholder feedback regarding proposed amendments to the School Facility Program (SFP) Grant Agreement resulting from changes to eligible expenditures from Assembly Bill (AB) 247, the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), which was approved by a majority of California's voters on November 5, 2024.

##### AUTHORITY

See Attachment A3a.

##### BACKGROUND

Proposition 2 amends Education Code (EC) Section 17072.35, 17074.25, and 17077.35 to incorporate additional eligible expenditures for purposes of SFP funding for both New Construction and Modernization projects. Additionally, EC Section 17073.16 was added to provide new supplemental grants to Modernization projects.

EC Section 17072.35 amendments related to additional eligible expenditures for New Construction projects are as follows:

- Expenditures for schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite as an eligible expenditure for new construction grants.
- Costs for design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments, or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and natural materials.
- Costs for seismic mitigation purposes and for related design, study, and testing.
- Ability to use a new construction grant to support construction of a school kitchen, a transitional kindergarten classroom, a facility to support a local educational agency-administered preschool program, or a facility to support school nurses and counselors to increase access to health care and mental health services.



EC Section 17073.16 is added and 17074.25 is amended to allow eligible expenditures for Modernization projects as follows:

- Expenditures for schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite as an eligible expenditure for modernization grants.
- Costs for design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments, or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and natural materials.
- Costs for seismic mitigation purposes and related design, study and testing costs.
- Remediation of lead in any water outlet used for drinking or preparing food with lead levels in excess of 15 parts per billion.
- Ability to use a modernization grant to support modernization of a school kitchen, a transitional kindergarten classroom, or a facility to support a local educational agency-administered preschool program, or a facility to support school nurses and counselors to increase access to health care and mental health services.
- Districts that are apportioned funds pursuant to Section 17073.16(a) shall use the supplemental grant for expanding an existing, or constructing a new, gymnasium, multipurpose room, library, or school kitchen.
- Districts that are apportioned funds pursuant to Section 17073.16(b) shall use the supplemental grant for retrofitting an existing facility or construction of new classrooms to house transitional kindergarten pupils.

EC Section 17077.35 is amended to allow eligible expenditures for both New Construction and Modernization projects as follows:

- The cost of plan design and inclusion of project components that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction. Components may include:
  - Electric heating, ventilation, and air conditioning (HVAC), school kitchen equipment, and water heating.
  - The use of ground source temperatures for heating and cooling.
  - Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.
  - Solar water heating technologies.
  - Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.
  - Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.

The new and amended statutes allow new construction and modernization projects to provide broadband internet access within schools, advance state energy goals, support outdoor learning environments, and support costs for seismic mitigation purposes and related design, study and testing.

The provisions add definitions that incorporate additional guidelines and eligible expenditures for new construction and modernization grants in Proposition 2. As a result of these changes, OPSC staff is presenting proposed additions to the Grant Agreement (GA) to be inclusive of additional eligible expenditures, pursuant to EC Sections 17072.35, 17073.16, 17074.25, and 17077.35 as reflected on Attachment A3c.

#### *SFP Grant Agreement*

A GA is an agreement between OPSC and an applicant who is approved by the State Allocation Board (Board) to receive grants from the School Facility Program. An agreement is required for each approved funding application.

The purpose of the GA is to improve oversight and accountability. It is a binding document that defines the responsibilities of districts and the state from the determination of the amount of eligible state funding to the reporting of all project funds. The GA includes lists that detail eligible project expenditures and ineligible project expenditures with the accompanying relevant statutory and regulatory authority.

The current GA with a revision date of 10/22 may be found through the following hyperlink: [Grant Agreements for School Construction](#)

### STAFF ANALYSIS/DISCUSSION

#### **Summary of changes to the SFP Grant Agreement for Eligible Expenditures**

##### *Grant Agreement [Proposition 2] (New 01/25)*

Because the GA includes detailed eligible and ineligible project expenditures, OPSC proposes a new GA that reflects the additional eligible expenditures authorized by Proposition 2 as reflected in funding applications received on or after October 31, 2024.

OPSC proposes the creation of a new, additional GA dated 01/25. The additional GA would delineate the eligible expenditures for applications received on or after October 31, 2024. For applications received before October 31, 2024, the existing GA with a revision date of 10/22 applies. For the following two sections, OPSC has condensed these changes into excerpts for the new GA. These excerpts encompass all current changes to the GA being proposed related to eligible expenditures.

*Proposition 2 – New Construction Eligible Expenditures and the Grant Agreement*

The additional eligible project expenditures allowed by Proposition 2 for New Construction projects must be included in a new GA. OPSC proposes additional eligible expenditure language pertaining to the New Construction – Separate Apportionment for Design Costs Or Adjusted Grant Common Eligible Project Expenditures and New Construction – Adjusted Grant Common Eligible Project Expenditures charts.

*New Construction – Separate Apportionment for Design Costs or Adjusted Grant Common Eligible Project Expenditures*

Specific to EC Section 17077.35, the following expenditures are proposed to be added:

- Costs for design of project components that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction, which may include:
  - Electric heating, ventilation, and air conditioning (HVAC), school kitchen equipment, and water heating.
  - The use of ground source temperatures for heating and cooling.
  - Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.
  - Solar water heating technologies.
  - Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.
  - Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.

OPSC anticipates presenting a stakeholder item for this topic at a future meeting to delineate details related to the amended EC Section 17077.35. The intention is to create a new GA with all necessary changes as they relate to funding applications received on or after October 31, 2024.

*Proposition 2 – New Construction – Adjusted Grant*

Specifically related to the amended EC Section 17072.35, the following expenditures have been proposed:

- Expenditures for schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite as an eligible expenditure for new construction grants.
- Costs for design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments, or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and natural materials.
- Costs for seismic mitigation purposes and for related design, study, and testing.

- Ability to use a new construction grant to support construction of a school kitchen, a transitional kindergarten classroom, a facility to support a local educational agency-administered preschool program, or a facility to support school nurses and counselors to increase access to health care and mental health services.
- The cost of plan design and inclusion of project components that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction. Components may include:
  - Electric heating, ventilation, and air conditioning (HVAC), school kitchen equipment, and water heating.
  - The use of ground source temperatures for heating and cooling.
  - Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.
  - Solar water heating technologies.
  - Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.
  - Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.

In addition to these expenditures, OPSC proposes additional language to this new GA as it relates to EC Sections 17073.16 and 17077.35. These topics will be covered in a future stakeholder item meeting; however, for the purposes of creating a new GA for applications received on or after October 31, 2024, OPSC is presenting all eligible expenditures under Proposition 2 within this item.

*Proposition 2 – Modernization – Separate Apportionment for Design Costs or Adjusted Grant Common Eligible Project Expenditures*

Within the new GA, OPSC proposes the addition of eligible expenditures language pertaining to EC Section 17077.35.

OPSC anticipates presenting a stakeholder item for this topic at a future meeting to delineate details related to the amended EC Section 17077.35. The intention is to create a new GA with all necessary changes as they relate to funding applications received on or after October 31, 2024.

*Proposition 2 –Modernization – Adjusted Grant Common Eligible Project Expenditures*

Within this new GA, OPSC proposes the addition of eligible expenditure language pertaining to the Modernization – Design Modernization – Adjusted Grant Common Eligible Project Expenditures chart to be added. Specifically, these expenditures will be added to the chart as follows, pursuant to the amended EC Section 17074.25:

- Expenditures for schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite as an eligible expenditure for modernization grants.

- Costs for design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments, or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and natural materials.
- Costs for seismic mitigation purposes and related design, study and testing costs.
- Remediation of lead in any water outlet used for drinking or preparing food with lead levels in excess of 15 parts per billion.
- Ability to use a modernization grant to support modernization of a school kitchen, a transitional kindergarten classroom, or a facility to support a local educational agency-administered preschool program, or a facility to support school nurses and counselors to increase access to health care and mental health services.
- Districts that are apportioned funds pursuant to Section 17073.16(a) shall use the supplemental grant for expanding an existing, or constructing a new, gymnasium, multipurpose room, library, or school kitchen.
- Districts that are apportioned funds pursuant to Section 17073.16(b) shall use the supplemental grant for retrofitting an existing facility or constructing new classrooms to house transitional kindergarten pupils.
- The cost of plan design and inclusion of project components that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction. Components may include:
  - Electric heating, ventilation, and air conditioning (HVAC), school kitchen equipment, and water heating.
  - The use of ground source temperatures for heating and cooling.
  - Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.
  - Solar water heating technologies.
  - Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.
  - Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.

EC Section 17073.16 has been added and Section 17077.35 has been amended as provisions of Proposition 2. Expenditures related to these sections of the EC are new eligible expenditures for applications received on or after October 31, 2024, aligning with OPSC's intention to create a new GA to reflect additional eligible expenditures for New Construction and Modernization projects listed above. As such, OPSC is presenting excerpts for the GA with these additional eligible expenditures at this meeting. OPSC anticipates presenting a stakeholder item for this topic at a future date to delineate details related to these eligible expenditures.

The proposed updates are reflected in Attachment A3b.

*Grant Agreement (New 01/2025) – Modernization of Portable Classrooms*

Under Section D of the GA (Receiving Board Approval), specifically for the component titled “Modernization of Portable Classrooms”, OPSC proposes the addition of this section titled “Modernization of Portable Classrooms on a Military Installation”. The additional language is specific to the replacement of portable classrooms for school districts that have a school facility located on a military installation that is the recipient of a federal grant for facilities modernization that requires a local matching share [pursuant to EC Section 17073.15(b)]. This change would add the following:

Modernization of Portable Classrooms on Military Installations: If this Agreement includes the modernization of portable classrooms eligible for an additional Apportionment pursuant to Education Code Section 17073.15(b), the Grantee certifies that:

- i. The Grants will be used to replace the portable classrooms located on a military installation that is a recipient of a federal grant for facilities modernization that requires a local matching share with a permanent structure.  
(Authority: SFP Regulation Section 1859.78.8)

This proposed change is reflected in Attachment A3c.

*Proposed Amendments to SFP Regulations*

In line with the creation of a new GA, OPSC proposes amending SFP Regulation Section 1859.2 (Definitions) to add an additional term “Grant Agreement [Proposition 2]” definition as well as amending the language relating to the existing term “Grant Agreement”, utilized throughout the SFP Regulations. The proposed amendments to these terms clarify that the GA with a revision date of 10/22 is applicable to funding applications before October 31, 2024, and the GA with a new date of 01/25 is applicable to funding applications received on or after October 31, 2024.

OPSC is asking for stakeholder feedback on OPSC’s proposed changes to the GA, reflected on Attachment A3b.

*Proposed Update to the Form SAB 50-04*

OPSC proposes updating the *Application for Funding* (Form SAB 50-04) to reflect the following certification specific to the construction of preschool classrooms:

With regards to the new construction of preschool classrooms, the District certifies that:

- ☐ The district is administering the program
- ☐ Addition of these preschool classrooms function as capacity for purposes of TK-12 enrollment. The number of classrooms built that are included in the plans and specifications for this project are: \_\_\_\_\_
- ☐ The district will meet Title 5 and Title 22, Division 12, Chapter 1 and obtain and be approved for licensure by the California Department of Social Services, unless the district qualifies as a license-exempt program.

## ATTACHMENT A3a

### AUTHORITY All Applications

#### **Education Code (EC) 17070.35 – General Provisions**

(a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

#### **School Facility Program (SFP) Regulation Section 1859.77.2. Use of New Construction Grant Funds for Projects Accepted by the DSA on or before January 22, 2003.**

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.



## ATTACHMENT A3a

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA on or before January 22, 2003 may be requested as follows:

(a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the grant requests above 100 percent of the number of pupils to be housed do not include eligibility based on Special Day Class pupils and if the district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:

(1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.

(2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all the following:

(1) The district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:

(A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.

(B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

## ATTACHMENT A3a

(2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b) in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its use of grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

### **SFP Regulation Section 1859.79.2. Use of Modernization Grant Funds.**

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(i) and may also be utilized for other purposes as set forth in Education Code Section 100420(c), and Labor Code Section 1771.3(a) in effect on January 1, 2012 through June 19, 2014. Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

## ATTACHMENT A3a

- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

### **SFP Regulation Section 1859.106. Program Accountability Expenditure Audit.**

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Education Code Sections 17072.13 and 17072.14 and Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs. For applications received on or after January 1, 2004, the adjustment may be made regardless of whether the hazardous waste/materials removal costs were requested on the application for funding.
- (b) For any insurance proceeds collectable by the district for displaced facilities and net proceeds available from the disposition of displaced facilities pursuant to Sections 1859.82.1(d) and 1859.82.2(d).
- (c) For any project that received funding pursuant to 1859.71.4(c) or 1859.78.1(b), 50 percent of one-fourth of one percent of the difference between the original Total Projected Bond Apportionment and the newly calculated amount.
- (d) Any adjustments made pursuant to this Section will be made only if sufficient bond authority is available for the adjustment. If an Unfunded List has been created by the Board, then any adjustments made pursuant to this Section will be placed on the Unfunded List.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within

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two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings.

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251 (b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50 (b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards.

If title to special education program facilities is transferred between a school district and a county office of education pursuant to Education Code Sections 17071.75(b)(2) and (f), the receiving School District shall remit payment to the State within 60 days or up to five years, pursuant to an approved repayment schedule, as requested by the School District. If a repayment schedule is requested, it shall be in equal annual installments and shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board. The repayment

## ATTACHMENT A3a

amount shall be determined by prorating the Financial Hardship assistance received on the initial Apportionment for the transferred facilities, including site acquisition costs apportioned for any land transferred, by the percentage of building area being transferred divided by the total amount of building area approved on the initial Application containing the transfer of facilities, if all of the following conditions are met:

- (a) The transferred facilities were constructed with State funds under Chapter 12.5.
- (b) Transfer of the facilities took place within ten years of initial occupancy.
- (c) The School District that initially acquired or constructed the transferred facilities had approved Financial Hardship status at the time of Apportionment of the project.
- (d) The School District receiving the facility did not have approved Financial Hardship status at either the time of the title transfer or the time that the adjustment request is submitted to the OPSC.

### **SFP Regulation Section 1859.152. Eligible Expenditures.**

SFP grants provided as the Final Apportionment or pursuant to Section 1859.153 must comply with Education Code Section 17072.35. Additionally, expenditures for construction are eligible only if the construction contract was entered into on or after April 29, 2002.

### **SFP Regulation Section 1859.169. Eligible Expenditures.**

Expenditures made with the Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

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### AUTHORITY

Applications Received on or after October 31, 2024

#### **EC Section 17072.35 – New Construction Funding Process**

(a) A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology, including schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use. A grant for new construction may also be used for the costs of designs and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high performance schools. A grant for new construction may be used for the costs of design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments, or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and natural materials. A grant for new construction may be used for seismic mitigation purposes and for related design, study, and testing costs.

(b) This section does not preclude a school district from using a grant for new construction to support the construction of a school kitchen, a transitional kindergarten classroom, a facility to support a local educational agency-administered preschool program, including, but not limited to, a California state preschool program set forth in Article 2 (commencing with Section 8207) of Chapter 2 of Part 6, that is operated by a school district and located on a schoolsite operated by the district, or a facility to support school nurses and counselors to increase access to health care and mental health services.

(c) In developing guidelines and regulations for consideration by the board, the State Department of Education shall provide a school district with maximum flexibility in the design and new construction of school facilities.

*(Added by Stats. 2024, Ch. 81, Sec. 12. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

**EC Section 17073.16 – Modernization Eligibility Determination**

(a) A school district eligible for funding pursuant to this article may receive a supplemental grant for either of the following:

(1) Expanding an existing gymnasium, multipurpose room, library, or school kitchen, if the facility is 60 percent or less than the department's recommended size needed to serve the enrollment of the school.

(2) Constructing a new gymnasium, multipurpose room, library, or school kitchen if the site is lacking one or more of the specified facilities.

(b) A site may receive a supplemental grant for only one project described in subdivision (a).

(c) (1) A school district eligible for a modernization apportionment may also receive a supplemental grant for either of the following:

(A) Retrofitting an existing school facility to adequately house transitional kindergarten pupils.

(B) Constructing new transitional kindergarten classrooms if the site is lacking sufficient school facilities to house transitional kindergarten pupils.

(2) A school district that receives a supplemental grant to house transitional kindergarten pupils pursuant to paragraph (1) shall meet the requirements of subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of, paragraphs (2) and (3) of subdivision (f) of, and subdivision (g) of, Section 17375.

(d) The funding provided under this section shall be in addition to any other funding provided pursuant to this article.

(e) The board, in consultation with the Superintendent, shall develop regulations implementing this section.

*(Added by Stats. 2024, Ch. 81, Sec. 13. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

**EC Section 17074.25 – Modernization Apportionment**

(a) (1) A modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of, the school. The improvement may only include the cost of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, the replacement of portable classrooms, necessary utility costs, utility connection and other fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos, seismic safety improvements, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology, including schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite. A modernization apportionment may be used for the costs of design, materials, demolition, and construction to advance state energy goals pursuant to state law, support outdoor learning environments, or to directly shade and protect pupils from higher average temperatures, which may include incorporating

## ATTACHMENT A3a

nature and natural materials. A modernization grant may not be used for costs associated with acquisition and development of real property or for routine maintenance and repair.

(2) A modernization apportionment may also be used for any of the following:

(A) The cost of designs and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high-performance schools.

(B) Seismic mitigation purposes and related design, study, and testing costs.

(C) To remediate any water outlet used for drinking or preparing food with lead levels in excess of 15 parts per billion.

(D) The control, management, or abatement of lead.

(b) This section shall not preclude a school district from using a grant for modernization to support the modernization of a school kitchen, a transitional kindergarten classroom, a facility to support a local educational agency-administered preschool program, including, but not limited to, a California state preschool program set forth in Article 2 (commencing with Section 8207) of Chapter 2 of Part 6, that is operated by a school district and located on a schoolsite operated by the district, or a facility to support school nurses and counselors to increase access to health care and mental health services.

(c) (1) A modernization apportionment may be used to limit pupil exposure to harmful air pollutants by updating air filtration systems.

(2) (A) This subdivision is declaratory of existing law.

(B) It is the intent of the Legislature in enacting Chapter 714 of the Statutes of 2018 (Assembly Bill 2453 of the 2017–18 Regular Session) to encourage school districts to add air filtration systems to applications for modernization apportionments when air pollution occasionally or regularly exceeds levels known to be harmful to public health.

(d) Notwithstanding any other provision of this article, a school district that is apportioned funds pursuant to Section 17073.16 shall use the supplemental grant for expanding an existing, or constructing a new, gymnasium, multipurpose room, library, or school kitchen.

(e) In developing guidelines and regulations for consideration by the board, the department, in consultation with the State Department of Education, shall provide a school district with maximum flexibility in the design and modernization of school facilities.

*(Amended by Stats. 2024, Ch. 81, Sec. 15. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

### **EC Section 17077.35 – Energy Efficiency**

(a) An applicant school district may include plan design and other project components that promote school facility energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction,



## ATTACHMENT A3a

and may seek a grant adjustment for the state's share of the increased costs associated with those components.

(b) Energy efficiency components that enable school facilities to advance state energy goals and adapt to higher average temperatures that pose a threat to the health and safety of pupils and staff are eligible for inclusion into a project pursuant to this section, including, but not limited to, all of the following:

(1) Electric heating, ventilation, and air conditioning (HVAC), school kitchen equipment, and water heating.

(2) The use of ground source temperatures for heating and cooling.

(3) Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.

(4) Solar water heating technologies.

(5) Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.

(6) Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.

(c) In order to be eligible for the grant adjustment pursuant to this section, the building proposed for the project, including the energy-efficiency and renewable energy measures used pursuant to this section, shall exceed the nonresidential building energy-efficiency standards specified in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations. The applicant shall certify that the cost for the project exceeds the amount of funding otherwise available to the applicant under this chapter.

(d) The board shall provide an applicant for a new construction or modernization project with a grant adjustment to provide an increase not to exceed 5 percent of its state grants authorized by Sections 17072.10 and 17074.10 for the state's share of costs associated with design, purchase, and installation related to school facility energy efficiency as set forth in this article.

(e) The board may adopt regulations for purposes of this section.

*(Amended by Stats. 2024, Ch. 81, Sec. 21. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

Office of Public School Construction Application Number: \_\_\_\_\_

**1. New Construction - Separate Apportionment for Design Costs  
 Or Adjusted Grant  
 Charter Schools Facilities Program - Separate Apportionment for Design Costs  
 Or Adjusted Grant  
 Common Eligible Project Expenditures**

DESIGN COSTS		
	Type of Expenditure	Authority
a.	Advertising for Construction Bids	Ed. Code Section 17072.35
b.	Architect's Fee for Plans	
c.	CDE Plan Check or Site Review Fee	
d.	California Environmental Quality Act (CEQA) Associated Costs	SFP Reg. Section 1859.105
e.	Consultant Fees – specific to SFP project(s) (prorate if necessary)	Ed. Code Section 17072.35*
f.	Division of the State Architect (DSA) Plan Check Fee	Ed. Code Section 17072.35
g.	Energy Analysis Fee	Ed. Code Section 17072.35*
h.	Legal Fees associated with: <ul style="list-style-type: none"> <li>The review of the SFP project-related lease agreements.</li> <li>The review of the SFP project-related contracts between districts and contractors, architects, construction managers or engineers.</li> <li>The review of the SFP project-related bid documents and bid responses.</li> </ul>	
i.	Local Agency Plan Check Fees	Ed. Code Section 17072.35
j.	Preliminary Site Tests	
k.	Engineering Fees	
l.	Costs for design of a project that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction, which may include: <ul style="list-style-type: none"> <li>Electric heating, ventilation, and air condition (HVAC), school kitchen equipment, and water heating.</li> <li>The use of ground source temperatures for</li> </ul>	Ed. Code Section <u>17077.35</u>

	<p><u>heating and cooling.</u></p> <ul style="list-style-type: none"><li>• <u>Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.</u></li><li>• <u>Solar water heating technologies.</u></li><li>• <u>Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.</u></li><li>• <u>Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.</u></li></ul>		
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\*These costs are recognized as components of allowable costs pursuant to EC Section 17072.35, and may be included as allowable expenditures under the New Construction program.

Office of Public School Construction Application Number: \_\_\_\_\_

**2. New Construction - Separate Apportionment for Site Acquisition Costs  
 Charter Schools Facilities Program - Separate Apportionment for Site Acquisition Costs  
 Common Eligible Project Expenditures**

	Type of Expenditure	Authority
Site Acquisition		
a.	Purchase Price of Property – provided site was not previously funded under Lease-Purchase Program or School Facility Program. Eligible purchase expenditure is the lesser of the appraised value (submitted within six months of a complete Form SAB 50-04) or actual site cost.	Ed. Code Sections 17072.12, 17072.35 & SFP Reg. Section 1859.74
Site (Other) (4 % Allowance)		
b.	Appraisal Fees	Ed. Code Section 17072.35 & SFP Reg. Sections 1859.74, 1859.74(2) or 1859.74(3), as appropriate
c.	Escrow Fees	
d.	Legal Fees associated with: <ul style="list-style-type: none"><li>• The review of site acquisition documents</li><li>• Site condemnation or relocation proceedings.</li><li>• The review of the SFP project-related lease agreements.</li></ul>	
e.	Litigation costs not to exceed the total SFP project funding Apportionment.	
f.	Preparation of POESA and PEA when required by the Department of Toxic Substances Control.	
g.	Survey Costs	
DTSC Fees		

Office of Public School Construction Application Number: \_\_\_\_\_

	Type of Expenditure	Authority
h.	DTSC Phase One Environmental Site Assessment (POESA) fees, Preliminary Environmental/ Endangerment Assessment (PEA) fees, and Response Action costs paid to the Department of Toxic Substances Control.	Ed. Code Sections 17072.13 & 17072.35
Hazardous Waste Removal		
i.	CEQA expenditures as long as they are not for services rendered by district personnel.	Ed. Code Sections 17072.13 & 17072.35
j.	Hazardous waste removal costs - only when associated with a Department of Toxic Substances Control issued determination of a need for a Remedial Action Plan, Removal Action Work Plan or Supplemental Site Investigation Plan to address necessary cleanup. Including: <ul style="list-style-type: none"><li>Expenses for Remedial Action Plan and/or Removal Action Work Plan if acted upon.</li><li>Expenses for public participation if Remedial Action Plan and/or Removal Action Work Plan acted upon.</li><li>Expenses for Supplemental Site Investigation with a Remedial Action Plan and/or Removal Action Work Plan</li><li>Expenses for Voluntary Cleanup Agreement and/or School Cleanup Agreement</li></ul>	
Relocation Assistance		
k.	Relocation Assistance – as long as expenditures conform to Title 25, CCR, Section 6000. This includes expenditures for the following: <ul style="list-style-type: none"><li>Residential Tenant Occupant Moving expenses</li><li>Rental Assistance – payment not to exceed \$5,250</li><li>Last Resort Housing</li></ul>	Ed. Code Sections 17072.13, 17072.35 & CA Code of Reg., Title 25, Section 6000

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	Type of Expenditure	Authority
	<ul style="list-style-type: none"> <li>Residential Owner Occupant Moving expenses Replacement Housing – Not to exceed \$25,500</li> <li>Business</li> <li>Moving expenses – In addition, a displaced business owner may file a claim for the following:  The cost directly related to modifying machinery, equipment, or other personal property to adopt it to the new site. The cost of any license, permit, or certification to reestablish a business at a new location  The reasonable cost of any professional services necessary for planning the move, moving the property, or installation of property at the replacement site.  When an item is not moved but replaced with a comparable item, reimbursement shall be the lesser of replacement cost or estimated cost of moving by professional mover.</li> <li>Losses of Tangible Personal Property</li> <li>Searching for a Replacement Site</li> <li>Re-establishment Expenses</li> <li>In Lieu Payments - Any displaced person who moves or discontinues their business may elect to receive a fixed relocation payment “in lieu” of moving, losses of tangible property, searching, and reestablishment costs.</li> </ul>	

Office of Public School Construction Application Number: \_\_\_\_\_

**3. New Construction - Adjusted Grant  
 Charter Schools Facilities Program - Adjusted Grant  
 Common Eligible Project Expenditures**

CONSTRUCTION COSTS		
	Type of Expenditure	Authority
a.	Construction Management Fees	Ed. Code Section 17072.35
b.	Building Construction Costs – Including: <ul style="list-style-type: none"> <li>• Foundations</li> <li>• Structures</li> <li>• Exterior &amp; Interior Finishes</li> <li>• Fittings &amp; Fixtures</li> <li>• Plumbing</li> <li>• Electrical</li> <li>• Mechanical</li> <li>• Shade Structures</li> <li>• Solar or Alternative Energy Source Components</li> </ul>	
c.	Construction Security (Campus Security and administrative overhead – not eligible)	Ed. Code Section 17072.35*
d.	Construction Tests	Ed. Code Section 17072.35
e.	Costs incurred to initiate, enforce and maintain a LCP, which may include school district “third party providers” costs, district’s own Force Account labor costs, or construction manager costs.	Labor Code Section 1771.1(a) & (b) & SFP Reg. Section 1859.79.2
f.	Force Account Labor – complies with the Public Contract Code and is specific to the project, adhering to the following criteria outlined in Section 20114: <ul style="list-style-type: none"> <li>• For school districts with an average daily attendance less than 35,000, the total number of hours on the job does not exceed 350 hours</li> <li>• For school districts with an average daily attendance of 35,000 or greater, the total number of hours on the job does not</li> </ul>	PCC Section 20114

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CONSTRUCTION COSTS		
	Type of Expenditure	Authority
	<p>exceed 750 hours or when the cost of material does not exceed \$21,000.</p> <ul style="list-style-type: none"> <li>• Must be work that involves a skilled trade.</li> </ul> <p>To be eligible must be supported by time cards or time logs.</p>	
g.**	<p>General Site Development within school property lines (Including but not limited to):</p> <ul style="list-style-type: none"> <li>• Finish Grading</li> <li>• Roads and Driveways</li> <li>• Sidewalks, stairs, &amp; Ramps</li> <li>• Parking Area</li> <li>• Curbs and Gutters</li> <li>• Turfed/Paved Play Area</li> <li>• Playground Equipment</li> <li>• Surface Drains &amp; Play Area</li> <li>• V-Gutters at Parking Lot</li> <li>• Landscaping &amp; Irrigation System</li> <li>• Site Lighting</li> <li>• Fencing &amp; Outdoor Walls</li> </ul>	SFP Reg. Section 1859.76(d)
h.	Inspections – For services provided during construction of project.	Ed. Code Section 17072.35
i.**	<p>Off-Site Development costs on up to two immediately adjacent sides of the site (see SFP Regulation Section 1859.76(b) for detail). Including:</p> <ul style="list-style-type: none"> <li>• Curbs &amp; Gutters</li> <li>• Sidewalks</li> <li>• Street Light, Planting Areas, Street Signs, Traffic Signals, Etc., Mandated by Local Ordinances</li> <li>• Special District Fees</li> <li>• Storm Drains to Point of Connection</li> <li>• Safety Paths</li> </ul>	SFP Reg. Section 1859.76(b)



Office of Public School Construction Application Number: \_\_\_\_\_

CONSTRUCTION COSTS		
	Type of Expenditure	Authority
j.**	<p>Service Site Development costs within school property lines (see SFP Regulation Section 1859.76(a) for detail). Including:</p> <ul style="list-style-type: none"> <li>• Site Clearance</li> <li>• Demolition</li> <li>• Rerouting Utility Lines</li> <li>• Rough Grading</li> <li>• Soil Compaction</li> <li>• Storm Drains</li> <li>• Erosion Control</li> <li>• Outside Stairs &amp; Retaining Walls</li> <li>• Relocation of Existing Portables</li> <li>• Fire Code Requirements</li> <li>• Multi-Level Parking</li> </ul>	SFP Reg. Section 1859.76(a)
k.**	<p>Utility Service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site (see SFP Regulation Section 1859.76(c) for more information) as follows:</p> <ul style="list-style-type: none"> <li>• Water</li> <li>• Sewage</li> <li>• Gas</li> <li>• Electric</li> <li>• Communication systems</li> </ul>	SFP Reg. Section 1859.76(c)
l.	<p>Furniture and Equipment that meet all of the criteria as described in Government Code Section 16727 and the California School Accounting Manual (CSAM), Procedure 770 as follows:</p> <ul style="list-style-type: none"> <li>• Lasts more than two years.</li> <li>• It is typically repaired rather than replaced.</li> <li>• It is an independent unit (rather than being incorporated into another unit item).</li> <li>• The cost of tagging and inventory is a small percentage of the item cost.</li> <li>• Not operational or administrative costs.</li> </ul>	Ed. Code Section 17072.35 & CSAM Procedure 770

Office of Public School Construction Application Number: \_\_\_\_\_

CONSTRUCTION COSTS		
	Type of Expenditure	Authority
	<p>It exceeds the minimum dollar value of capitalization threshold established by the local educational agency, but in no case should the threshold be less than \$5,000. The following types of furniture and equipment are examples that would be eligible if they met the criteria for CSAM Procedure 770:</p> <ul style="list-style-type: none"> <li>• Projectors</li> <li>• Smart Boards</li> <li>• Freezers</li> <li>• Refrigerators</li> <li>• Stoves</li> <li>• Exercise equipment – Only if available for use by all students</li> </ul>	
m.	<p>Furniture and Equipment:</p> <ul style="list-style-type: none"> <li>• Desks</li> <li>• Chairs</li> <li>• Built-in Storage</li> <li>• Cabinets</li> <li>• Window Coverings</li> <li>• White/Chalk Boards</li> <li>• Library Books</li> </ul>	Ed. Code Section 17072.35
n.	Demolition Costs	Ed. Code Section 17072.35
o.	Interim Housing – only eligible if new construction additions are to an existing site where classrooms temporarily are inaccessible or unsafe to house students during construction.	Ed. Code Section 17072.35*
p.	<u>Costs attributable to schoolsite-based infrastructure to provide access to broadband internet within the schoolsite.</u>	<u>Ed. Code Section 17072.35*</u>
q.	<u>Costs of design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and nature materials.</u>	<u>Ed. Code Section 17072.35*</u>

<u>r.</u>	<u>Seismic Mitigation Costs – the cost must be attributable to design, study, and testing.</u>	<u>Ed. Code Section 17072.35*</u>
<u>s.</u>	<u>Support for constructing the construction of a school kitchen, a transitional kindergarten classroom, a facility to support a local education agency-administered preschool program that is operated by a school district and located on a schoolsite operated by the district, or a facility to support school nurses and counselors to increase access to health care and mental health services.</u>	<u>Ed. Code Section 17072.35*</u>
<u>v.</u>	<u>Costs for plan design and inclusion of project components that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction.</u> <u>Components may include:</u> <ul style="list-style-type: none"> <li>• <u>Electric heating, ventilation, and air condition (HVAC), school kitchen equipment, and water heating.</u></li> <li>• <u>The use of ground source temperatures for heating and cooling.</u></li> <li>• <u>Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.</u></li> <li>• <u>Solar water heating technologies.</u></li> <li>• <u>Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.</u></li> <li>• <u>Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.</u></li> </ul>	<u>Ed. Code Section 17077.35</u>

\*These costs are recognized as components of allowable costs pursuant to EC Section 17072.35, and may be included as allowable expenditures under the New Construction program.

\*\*Eligible expenditures in these sections may exceed the amounts requested on the Funding Application.

Office of Public School Construction Application Number: \_\_\_\_\_

**4. Modernization - Separate Apportionment for Design Costs  
 Or Adjusted Grant  
 Common Eligible Project Expenditures**

DESIGN COSTS		
	Type of Expenditure	Authority
a.	Advertising for Construction Bids	Ed Code Section 17074.25
b.	Architect's Fee for Plans	
c.	CDE Plan Check Fee	
d.	California Environmental Quality Act (CEQA) Associated Costs	SFP Reg. Section 1859.105
e.	Consultant Fees – specific to SFP project(s) (prorate if necessary)	Ed Code Section 17074.25*
f.	Division of the State Architect (DSA) Plan Check Fee	Ed Code Section 17074.25
g.	Energy Analysis Fee	Ed Code Section 17074.25*
h.	Legal Fees associated with: <ul style="list-style-type: none"> <li>The review of the SFP project-related lease agreements.</li> <li>The review of the SFP project-related contracts between districts and contractors, architects, construction managers or engineers.</li> <li>The review of the SFP project-related bid documents and bid responses.</li> </ul>	
i.	Local Agency Plan Check Fees	Ed Code Section 17074.25
j.	Preliminary Site Tests	
k.	Engineering Fees	
l.	<u>Costs for design of a project that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction, including: Costs for design of a project that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction, which may include:</u> <ul style="list-style-type: none"> <li><u>Electric heating, ventilation, and air condition (HVAC), school kitchen equipment, and water heating.</u></li> <li><u>The use of ground source temperatures for heating and cooling.</u></li> </ul>	<u>Ed Code Section</u> <u>17077.35</u>

	<ul style="list-style-type: none"><li>• <u>Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.</u></li><li>• <u>Solar water heating technologies.</u></li><li>• <u>Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.</u></li><li>• <u>Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not limited to, natural surfaces.</u></li></ul>	
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\*These costs are recognized as components of allowable costs pursuant to EC Section 17074.25, and may be included as allowable expenditures under the Modernization program.

Office of Public School Construction Application Number: \_\_\_\_\_

**5. Modernization - Adjusted Grant  
 Common Eligible Project Expenditures**

CONSTRUCTION COSTS		
	Type of Expenditure	Authority
a.	Construction Management Fees	Ed Code Section 17074.25
b.	Building Construction Costs – Including: <ul style="list-style-type: none"> <li>• Foundations</li> <li>• Structures</li> <li>• Exterior &amp; Interior Finishes</li> <li>• Fittings &amp; Fixtures</li> <li>• Plumbing</li> <li>• Electrical</li> <li>• Mechanical</li> <li>• Shade Structures</li> <li>• Solar or Alternative Energy Source Components</li> </ul>	
c.	Construction Security (Campus Security not eligible and administrative overhead not eligible)	Ed Code Section 17074.25*
d.	Construction Tests	Ed Code Section 17074.25
e.	Costs incurred to initiate, enforce and maintain a LCP, which may include school district “third party providers” costs, district’s own Force Account labor costs, or construction manager costs.	Labor Code Section 1771.1(a) & (b) & SFP Reg. Section 1859.79.2
f.	Force Account Labor – complies with the Public Contract Code and is specific to the project, adhering to the following criteria outlined in Section 20114: <ul style="list-style-type: none"> <li>• For school districts with an average daily attendance less than 35,000, the total number of hours on the job does not exceed 350 hours</li> <li>• For school districts with an average daily attendance of 35,000 or greater, the total number of hours on the job does not exceed 750 hours or when the cost of material does not exceed \$21,000.</li> <li>• Must be work that involves a skilled trade.</li> </ul>	PCC Section 20114

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CONSTRUCTION COSTS		
	Type of Expenditure	Authority
	To be eligible must be supported by time cards or time logs.	
g.	Inspections – For services provided during construction of the project.	Ed Code Section 17074.25
h. **	Utility Services – Only if approved for fifty years or older permanent building Modernization project (see SFP Regulation Section 1859.78.7).	Ed Code Section 17074.25 & SFP Reg. Section 1859.78.7
i.	<p>Furniture and Equipment that meet all of the criteria as described in the California School Accounting Manual (CSAM), Procedure 770 as follows:</p> <ul style="list-style-type: none"> <li>• Lasts more than one year.</li> <li>• It is typically repaired rather than replaced.</li> <li>• It is an independent unit (rather than being incorporated into another unit item).</li> <li>• The cost of tagging and inventory is a small percentage of the item cost.</li> <li>• Not operational or administrative costs.</li> </ul> <p>It exceeds the minimum dollar value of capitalization threshold established by the local educational agency. The following types of furniture and equipment are examples that would be eligible if they met the criteria for CSAM Procedure 770:</p> <ul style="list-style-type: none"> <li>• Projectors</li> <li>• Smart Boards</li> <li>• Freezers</li> <li>• Refrigerators</li> <li>• Stoves</li> <li>• Exercise equipment – Only if available for use by all students</li> </ul>	Ed Code Section 17074.25 & CSAM Procedure 770
j.	<p>Furniture and Equipment:</p> <ul style="list-style-type: none"> <li>• Desks</li> </ul>	Ed Code Section 17074.25

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CONSTRUCTION COSTS		
	Type of Expenditure	Authority
	<ul style="list-style-type: none"> <li>Chairs</li> <li>Built-in Storage</li> <li>Cabinets</li> <li>White/Chalk Boards</li> <li>Library Books</li> </ul>	
k.	Demolition Costs – the cost must be attributable to replacement of “like kind” building area (see SFP Regulation Section 1859.79.2(a)).	Ed Code Section 17074.25
l.	Interim Housing	Ed Code Section 17074.25*
m.	Removal of hazardous waste from a modernization project the DTSC has declared unsafe which does not exceed ten percent of the total modernization Apportionment.	SFP Reg. Section 1859.74.2(c)
n.	<u>Expenditures for schoolsite-based infrastructure necessary to provide access to broadband internet within the schoolsite as an eligible expenditure for modernization grants.</u>	<u>Ed Code Section 17074.25*</u>
o.	<u>Costs of design, materials, and construction to advance state energy goals pursuant to state law, support outdoor learning environments or to directly shade and protect pupils from higher average temperatures, which may include incorporating nature and nature materials.</u>	<u>Ed Code Section 17074.25*</u>
p.	<u>Seismic Mitigation Costs – the cost must be attributable to design, study, and testing.</u>	<u>Ed Code Section 17074.25*</u>
q.	<u>Costs attributable to water outlet remediation.</u>	<u>Ed Code Section 17074.25*</u>
r.	<u>Remediation of lead in any water outlet used for drinking or preparing food with lead levels in excess of 15 parts per billion.</u>	<u>Ed Code Section 17074.25*</u>



s.	<u>Support for expanding an existing, or constructing a new, gymnasium, multipurpose room, library, or school kitchen.</u>	<u>Ed Code Section 17074.25*</u>
t.	<u>Costs associated with the modernization of a school kitchen, a transitional kindergarten classroom, a facility to support a local education agency-administered preschool program, including but not limited to, a California state preschool program that is operated by a school district and located on a schoolsite operated by the district, or a facility to support school nurses and counselors to increase access to health care and mental health services.</u>	<u>Ed Code Section 17074.25*</u>
u.	<u>Districts apportioned funds pursuant to Section 17073.16(a) shall use the supplemental grant for expanding an existing, or constructing a new gymnasium, multipurpose room, library, or school kitchen.</u>	<u>Ed. Code Section 17073.16(a)</u>
v.	<u>Districts apportioned funds pursuant to Section 17073.16(b) shall use the supplemental grant for retrofitting an existing facility or constructing new classrooms to house transitional kindergarten pupils.</u>	<u>Ed. Code Section 17073.16(b)</u>
w.	<u>Costs for plan design and inclusion of project components that promote energy efficiency approaching the ultimate goal of school facility energy self-sufficiency and pollution reduction. Components may include:</u> <ul style="list-style-type: none"> <li><u>Electric heating, ventilation, and air condition (HVAC), school kitchen equipment, and water heating.</u></li> <li><u>The use of ground source temperatures for heating and cooling.</u></li> <li><u>Energy and water conservation, load reduction, peak-load shifting, and building energy efficiency measures.</u></li> <li><u>Solar water heating technologies.</u></li> <li><u>Onsite renewable energy and storage, such as photovoltaics and battery storage, microgrid controllers, and service panel upgrades.</u></li> </ul> <u>Shade structures and the conversion of ground and rooftop surfaces to materials with low absorption and reflection of heat, which may include, but are not</u>	<u>Ed. Code Section 17077.35</u>

# ATTACHMENT A3b

STATE OF CALIFORNIA  
**GRANT AGREEMENT**  
SCHOOL FACILITY PROGRAM  
(Rev. 01/25)

STATE ALLOCATION BOARD  
OFFICE OF PUBLIC SCHOOL CONSTRUCTION  
Page x of x

	<u>limited to, natural surfaces.</u>	
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\*These costs are recognized as components of allowable costs pursuant to EC Section 17074.25, and may be included as allowable expenditures under the Modernization program.

\*\*Eligible expenditures in these sections may exceed the amounts requested on the Funding Application.

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#### **D. Receiving Board Approval**

1. Grantee must have (1) title, (2) leasehold, or (3) other interest to Project lands. Title may include an order for pre-judgement possession issued by a court in an eminent domain proceeding.

*(Authority: Education Code Section 17070.70; SFP Regulation Sections 1859.74 and 1859.74.1)*

2. Grantee understands and agrees that the Grants, combined with local funds, shall be sufficient to complete the Project.

*(Authority: Education Code Section 17070.63(a))*

3. The Grantee has established a "Restricted Maintenance Account" for the exclusive purpose of providing ongoing and major maintenance of school buildings and has developed an ongoing and major maintenance plan that complies with and is implemented under the provisions of Education Code Section 17070.75 and 17070.77 (refer to Regulation Sections 1859.100 through 1859.102).

*(Authority: SFP Regulation Section 1859.100 and Form SAB 50-04 certifications)*

4. The Grantee has or will comply with Education Code Section 17076.11 regarding at least a three (3) percent expenditure goal for disabled veteran business enterprises.

*(Authority: Form SAB 50-04 certifications)*

5. The Grantee understands and agrees that (1) Grants required to be adjusted for site acquisition for both New Construction and Charter School Facilities Program projects, and (2) Grants not used by the Grantee that failed to meet substantial progress and (3) unspent Financial Hardship Grants, (4) unspent Charter School Facilities Program Grants, or (5) unspent Career Technical Education Facilities Program Grants must be returned to the state school facilities fund from which the Grants were apportioned as a result of an audit, pursuant to Education Code Section 17076.10 and Education Code Section 41024, as applicable.

6. The Grantee understands and agrees that, if it does not remit the amount of Ineligible Expenditures identified in the audit report within 120 days of being invoiced by the Office of Public School Construction, and if no repayment plan has been approved pursuant to paragraph (d) of Section 41024 of the Education Code, then the Controller shall deduct the total amount of any Ineligible Expenditures from apportionments pursuant to paragraph (d) of Section 41024 of the Education Code. The Grantee may request a payment plan pursuant to paragraph (d) of Section 41024 of the Education Code.

7. If the Grants will be used for the construction or modernization of school facilities on leased land, the Grantee has entered into a lease agreement for the leased property that meets the requirements of School Facility Program Regulation Section 1859.22.

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Office of Public School Construction Application Number: \_\_\_\_\_

8. The Grantee has established a facilities inspection system to ensure that each of its schools is maintained in good repair.

*[Authority: Education Code Section 17070.75(f)]*

9. The statutorily-required Grantee matching funds have either been expended by the Grantee, have been deposited by the Grantee in the county fund, or will be expended by the Grantee prior to notice of completion of the project.

*(Authority: Education Code Sections 17072.30, 17074.16, 17078.72(g)(1), 17078.54(d), and 17075.10(b)(2); Form SAB 50-04 certifications)*

10. The Grantee has considered the feasibility of using designs and materials for the new construction or modernization project that promote the efficient use of energy and water, maximum use of natural light and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and the other characteristics of high performance schools.

*(Authority: Education Code Section 17070.96)*

11. Financial Hardship Review Process

- i. If the Grantee has requested Financial Hardship Grants, the Financial Hardship approval from the Office of Public School Construction was valid (Financial Hardship approvals are valid for 180 days) on the date the Approved Funding Application was received by the Office of Public School Construction.

*[Authority: SFP Regulation Section 1859.81(e)]*

ii.

- a) If the Grantee has requested Financial Hardship Grants and has a bridge financing debt instrument in place, or will have a bridge financing debt instrument in place in the future in order to move the Project forward until Grants become available, then the Grantee agrees that it has received, or will receive, bridge-financing approval from the Office of Public School Construction.
- b) The Grantee also agrees to retire all bridge financing debt within 60 calendar days of receiving Grants. Failure to retire all bridge financing debt within 60 calendar days of receiving Grants will result in the amount of the Financial Hardship Grants in this Agreement being reduced by the amount of the bridge financing that was not retired.

- iii. If the Project remained on the Unfunded List (Lack of AB 55 Loans) for more than 180 days, the Grantee understands and agrees that the Office of Public School Construction shall conduct a review to determine if the Grantee has additional funds available to contribute to the Grantee's matching funds.

*[Authority: SFP Regulation Section 1859.81(e) and (f)]*

- iv. If the additional Office of Public School Construction review, pursuant to Section (iii) above, determined that the amount of the Financial Hardship Grant required an adjustment, pursuant to Financial Hardship rules detailed in SFP Regulation Section 1859.81, the amount of the Grants detailed in this Agreement will be amended.

Office of Public School Construction Application Number: \_\_\_\_\_

*[Authority: SFP Regulation Section 1859.81(a)]*

12. [Instructions: The following sections only apply to the program, or other circumstance, that is detailed in this Agreement.]

*New Construction:*

- i. The Grantee has received approval of the site and the plans from the California Department of Education and the Division of the State Architect. Plan approval is not required if request is for separate design Apportionment.

*(Authority: SFP Regulation Section 1859.81.1)*

- ii. The Grantee agrees to submit Project Information Worksheets pursuant to School Facility Program Regulation Section 1859.104.

*Seismic Mitigation Program Replacement or Facility Hardship Replacement:*

The Grantee agrees that the scope of this Project is the minimum work necessary to obtain approval by the Division of the State Architect and/or the federal, state, or local governmental entity with authority over of the work being performed to mitigate the

\_\_\_\_\_  
 (health and safety or seismic) threat.

The Project must have an industry specialist report to substantiate the \_\_\_\_\_

\_\_\_\_\_  
 (health and safety or seismic) threat and that details the minimum work necessary to mitigate the threat.

The Project must have concurrence by an appropriate governmental agency agreeing with the \_\_\_\_\_

\_\_\_\_\_  
 (health and safety or seismic) threat and the minimum work necessary to mitigate the threat.

The Project must have the approval letter from DSA verifying that the building(s) in the Project qualify as one of the "Most Vulnerable Category 2 Buildings".

*Site Acquisition:* The Grantee has complied with Sections 1859.74 through 1859.75.1, as appropriate. The Grantee shall provide all applicable county assessor parcel numbers for the land being acquired for the Project. Grantee understands and agrees that Grants for site acquisition (i.e. site purchase, hazardous materials mitigation, relocation, etc.) as described in Section F (Accounting for Spent Funds) of this Agreement are limited to actual eligible expenditures. Therefore, the audit report may result in an adjustment (increase or decrease) to the Grant amount based on the final approved expenditures related to site acquisition separate and apart from all other Grants.

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*Modernization of Portable Classrooms:* If this Agreement includes the modernization of portable classrooms eligible for an additional Apportionment pursuant to Education Code Section 17073.15(a), the Grantee certifies that either:

- i. The Grants will be used to replace the portable classrooms and permanently remove the displaced portables from the classroom use within six months of the filing of the Notice of Completion for the project; or,
- ii. It has provided documentation to the Office of Public School Construction which indicates that modernizing the portable classrooms eligible for an additional Apportionment is better use of public resources than the replacement of these facilities.

*Modernization of Portable Classrooms on Military Installations:* If this Agreement includes the modernization of portable classrooms eligible for an Apportionment pursuant to Education Code Section 17073.15(b), the Grantee certifies that the Grants will be used to replace the portable classrooms located on a military installation that is a recipient of a federal grant for facilities modernization that requires a local matching share with a permanent structure.

(Authority: SFP Regulation Section 1859.78.8)

*Modernization or Charter School Facilities Program Rehabilitation:* If this Agreement includes the modernization or Charter School Facilities Program Rehabilitation funding, the Grantee has received approval of the plans for the project from the California Department of Education and the Division of the State Architect. Plan approval is not required if request is for separate design Apportionment or advance release of funds for design from a Preliminary Charter School Apportionment.

(Authority: Modernization: SFP Regulation Section 1859.81.1; Charter: SFP Regulation Section 1859.163)

*Seismic Mitigation Program Rehabilitation or Facility Hardship Rehabilitation:*

The Grantee agrees that the scope of this Project is the minimum work necessary to obtain approval by the Division of the State Architect and/or the federal, state, or local governmental entity with authority over of the work being performed to mitigate the

\_\_\_\_\_  
 (health and safety or seismic) threat.

The Project must have an industry specialist report to substantiate the \_\_\_\_\_

\_\_\_\_\_  
 (health and safety or seismic) threat and that details the minimum work necessary to mitigate the threat.

The Project must have concurrence by an appropriate governmental agency agreeing with the \_\_\_\_\_

\_\_\_\_\_  
 (health and safety or seismic) threat and the minimum work necessary to mitigate the threat.

The Project must have the approval letter from DSA verifying that the building(s) in the Project qualify as one of the "Most Vulnerable Category 2 Buildings".

The Project must have the approval letter from DSA indicating that the work in the

---

project plans is the minimum work required to mitigate the \_\_\_\_\_

---

(health and safety or seismic) threat, which includes any other work triggered by the (health and safety or seismic) mitigation work and that is required in order to obtain DSA approval.

***Charter:***

- i. Facilities to be rehabilitated under the Charter School Facilities Program previously funded with School Facility Program funds meet the requirements of Regulation Section 1859.163.
- ii. The Grantee agrees to submit Project Information Worksheets pursuant to School Facility Program Regulation Section 1859.104.

***Charter-Preliminary Charter School Apportionment:***

- i. The Grantee agrees that failure to submit a Final Charter School Apportionment within the timelines prescribed for a Preliminary Charter School Apportionment (four years with a possible one year extension subject to Board approval) shall be cause for rescission of the Preliminary Charter School Apportionment; and,

*(Authority: SFP Regulation Section 1859.166)*

- ii. The Grantee agrees that when the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the funding available for the Final Charter School Apportionment is subject to the provisions of Section 1859.167; and,

*(Authority: SFP Regulation Section 1859.167)*

- iii. The Grantee agrees that the California School Finance Authority must determine that the Grantee is financially sound at the time of the Preliminary Charter School Apportionment, advance release of design and/or site funds, and at the time of conversion to a Final Charter School Apportionment or the Preliminary Charter School Apportionment will be rescinded; and,

*(Authority: SFP Regulation Section 1859.163)*

- iv. The Grantee agrees that in addition to this grant agreement, the Grantee must also enter into the Charter School Agreements.

*(Authority: SFP Regulation Section 1859.90.2)*

***Career Technical Education Facilities Program:***

The Grantee has complied with the Career Technical Education Facilities Program (CTEFP) eligibility criteria as outlined in Section 1859.192; and,

For Projects that received an Apportionment pursuant to SFP Regulation Section 1859.193(d) (CTEFP reservation of funds):

- i. The Grantee understands and agrees that by reserving funds in advance of obtaining the necessary approvals from California Department of Education and the Division of the State Architect, the Grantee must submit the necessary

# ATTACHMENT A3c

STATE OF CALIFORNIA  
**GRANT AGREEMENT**  
SCHOOL FACILITY PROGRAM  
(Rev. 01/25)

STATE ALLOCATION BOARD  
OFFICE OF PUBLIC SCHOOL CONSTRUCTION  
Page x of x

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Office of Public School Construction Application Number: \_\_\_\_\_

approvals and/or plans and specifications within one year of Apportionment; otherwise the Apportionment will be rescinded without further Board action.

ii. Upon approval for placement on the Unfunded List (Lack of AB 55 Loans), the Grantee will receive a template of the Project Grant Agreement. OPSC will provide the Grantee the final Grant Agreement for the Project upon receipt of the necessary approvals from the Division of the State Architect and California Department of Education

iii. The Grantee understands and agrees that the executed the Grant Agreement must be submitted prior to fund release.

*(Authority: SFP Regulation Section 1859.197)*



## ATTACHMENT A3d

### PROPOSED REGULATIONS

#### Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

...

"Grant Agreement" means *Grant Agreement* (Rev. 10/22), applies to funding applications received by OPSC before October 30, 2024, which is incorporated by reference.

"Grant Agreement [Proposition 2] applies to funding applications received by OPSC on or after October 31, 2024, which is incorporated by reference.

...

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026 and 101012(a)(8), Education Code; Section 53311, Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5, Labor Code.

## ATTACHMENT A4

### OFFICE OF PUBLIC SCHOOL CONSTRUCTION STAKEHOLDER MEETING January 30, 2025

#### PROPOSED REGULATORY AMENDMENTS FOR SCHOOL FACILITY PROGRAM MATCHING SHARES

##### PURPOSE

To discuss and receive stakeholder input regarding proposed regulatory amendments resulting from the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), which was approved by a majority of California's voters on November 5, 2024, related to School Facility Program (SFP) Regulation Sections 1859.77.1 and 1859.79. Additionally, the Office of Public School Construction (OPSC) proposes the addition of SFP Regulation Section 1859.92.1. These amendments would implement Proposition 2's points-based determination and sliding scale for the required local match for SFP projects.

##### AUTHORITY

See Attachment A4a.

##### BACKGROUND

###### *Fixed State Share Percentage*

Historically, SFP New Construction and Modernization projects have been eligible for a fixed state share percentage of the total approved project cost, except for school districts that qualify for financial hardship funding. School districts applying for New Construction funding must provide an equal matching share (50/50). School districts applying for Modernization funding, the state provides 60 percent of the total approved project cost, and the school district provides 40 percent of the total approved project cost.

###### *Proposition 2 – Points-Based Determination and Sliding Scale for Required Matching Share*

Proposition 2 establishes a points-based determination and sliding scale for the required state and local matching shares for SFP projects that do not qualify for financial hardship assistance<sup>1</sup>. Proposition 2 specifies the number of points awarded based on the school district's gross bonding capacity per enrollment, the school district's unduplicated pupil percentage as determined for purposes of the Local Control Funding Formula, whether the school district has an enrollment of 200 pupils or fewer, and whether the project includes the use of a project labor agreement. Based on the total number of points for a project, the required local matching share will be adjusted as follows, with no change to the total approved project cost. The range of total possible points is between 3 points and 16 points,

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<sup>1</sup> School districts eligible for financial hardship assistance may qualify for additional state funding beyond the Proposition 2 points-based determination and sliding scale amounts and may receive up to 100 percent state funding.

inclusive. These changes are applicable to all SFP applications received on or after October 31, 2024. Proposition 2 specifies that SFP applications received before October 31, 2024 will be processed to the Board in accordance with SFP statutes as they read on January 1, 2024. The relevant statutory changes are as follows:

- Education Code (EC) Section 17070.59 has been added to establish a points-based determination and sliding scale for the required state and local match for SFP projects that do not qualify for financial hardship projects.
- EC Section 17070.87 has been added to require new construction and modernization applications submitted before October 31, 2024, to be processed and apportioned in accordance with the SFP statutes, as they read on January 1, 2024.
- EC Section 17072.30 has been amended to outline the sliding scale and point allocation as it relates to New Construction projects and delete a reference to the fixed 50 percent state share.
- EC 17074.16 has been amended to outline the sliding scale and point allocation as it relates to Modernization projects and delete references to the fixed 60 percent state share and 40 percent local match.

*Points-Based Determination and Sliding Scale*

EC 17070.59 creates a points-based determination based on four criteria and a sliding scale related to the state share and local share of projects, assigned as the following:

**Gross Bonding Capacity\* per Total School District Enrollment**

\$0 - \$9,999	4 points
\$10,000 - \$19,999	3 points
\$20,000 - \$54,999	2 points
\$55,000+	1 point

**Unduplicated Pupil Percentage**

75.00% - 100.00%	8 points
50.00% - 74.99%	6 points
25.00% - 49.99%	4 points
<= 24.99%	2 points

**School District Enrollment <= 200 pupils = 2 points**

**Project includes the use of a Project Labor Agreement = 2 points**

Based on the number of points for a project, Proposition 2 specifies that the required SFP state and local matching shares will be adjusted as follows:

### New Construction

	State Share	Local Share
>10 points	55%	45%
9 or 10 points	53%	47%
8 points	52%	48%
6 or 7 points	51%	49%
<6 points*	50%*	50%*

### Modernization

	State Share	Local Share
>10 points	65%	35%
9 or 10 points	63%	37%
8 points	62%	38%
6 or 7 points	61%	39%
<6 points*	60%*	40%*

\* School district projects with a total of fewer than 6 points receive the same state and local matching share percentages as SFP projects prior to Proposition 2.

As a result of these changes, OPSC staff is presenting proposed amendments to SFP Regulation Sections, as seen on Attachment A4b.

### STAFF ANALYSIS/DISCUSSION

Proposition 2 necessitates modifications to the SFP Regulations to allow school districts to continue submitting eligibility and funding applications to OPSC that conform to the amended EC. OPSC is asking for stakeholder feedback on proposed amendments pursuant to EC Section 17070.59(e), as reflected in Attachment A4b.

#### *EC Section 17070.59(a) - Gross Bonding Capacity*

Gross bonding capacity refers to a school district's capacity to issue debt. The new EC Section 17070.59 specifies how to determine the points used to compute the required local matching funds from local sources (pursuant to EC Sections 17072.30 and 17074.16, for New Construction and Modernization purposes respectively).

Specific to the District's gross bonding capacity and pursuant to EC Section 17070.59(a), for each school district, the department shall divide the district's gross bonding capacity by the district's total enrollment, as determined for purposes of this chapter.

$$\begin{array}{c}
 \text{District's Gross Bonding Capacity} \\
 \textbf{Divided By} \\
 \text{District's Total Enrollment} \\
 \textbf{Equals} \\
 \text{Gross Bonding Capacity per District's Total Enrollment}
 \end{array}$$

Enrollment in this case shall be determined by a review of the district's annual enrollment data within the California Department of Education (CDE)'s DataQuest, which provides data and statistics about California's TK/K-12 public educational system. This data is provided through the California Basic Educational Data System (CBEDS), which is an annual data collection administered in October by CDE.

The enrollment year used shall be reflected as November 1 through October 31. For instance, November 1, 2024, through October 31, 2025, would be reflective of the 2024-2025 enrollment year. Regarding the specific enrollment year used, OPSC proposes to use the same enrollment year in which the application is being processed to align with current practices.

*Example of Gross Bonding Capacity per Total Enrollment Calculation*

If a district has a gross bonding capacity of \$163,000,000, and a total enrollment of 2,282 pupils, their gross bonding capacity per the district's total enrollment will be calculated as the following:

$$\begin{array}{r} \underline{\$263,000,000} \\ \text{Divided By} \\ \underline{2,282 \text{ (pupils)}} \\ \text{Equals} \\ \underline{\$115,249.78 \text{ (rounded to the nearest dollar as \$115,250)}} \end{array}$$

In accordance with the new points-based system and this example, this district has a gross bonding capacity per enrollment of \$115,250. Therefore, this amount exceeds \$55,000, and as a result, the district receives 1 point in the calculation to determine its matching share.

*EC Section 17070.59(b) - Unduplicated Pupil Percentage*

EC Section 17070.59(b)(1) specifies that for each school district, the department shall identify each district's unduplicated pupil percentage as determined for purposes of the local control funding formula (pursuant to Section 42238.02). EC Sections 17070.59(b)(2)(A), (b)(2)(B), (b)(2)(C), and (b)(2)(D) delineate the points received based upon determination of unduplicated pupil percentages between specified percentages.

The Unduplicated Pupil Percentage (UPP) is a percentage based off of three years of data (the current, prior, and second year) of targeted disadvantaged students. According to CDE's website, "the UPP is not an average of each year's percentage; rather, the sum of the unduplicated pupil count (UPC) for the three years is divided by the sum of enrollment for the three years to produce the current year's UPP. In subsequent years, the newest year will be added, and the oldest will be dropped off."

This data may be found through Local Control Funding Formula (LCFF) Summary Data spreadsheets, available by fiscal year, which are available here: [Statewide LCFF Summary Data - Principal Apportionment \(CA Dept of Education\)](#).

The LCFF Summary Data spreadsheets for each fiscal year populate with the UPP, allowing for verification of this percentage.

**LCFF Summary Data**  
2023–24 Second Principal Apportionment  
California Department of Education  
NOTE: Some LEAs may not display funding data due to closures or other changes during the fiscal year.  
Legend: LCFF = Local Control Funding Formula; ADA = Average Daily Attendance; MSA = Minimum State Aid; NSS = Necessary Small Schools; TK = Transitional Kindergarten

County Code	District Code	School Code	Local Educational Agency	Charter Number	Funded TK/K-3 ADA	Funded 4 - 6 ADA	Funded 7 - 8 ADA	Funded 9 - 12 ADA	Total Funded ADA or Alternative Education Grant ADA	Unduplicated Pupil Percentage
01	10017	0000000	Alameda Co. Office of Education	N/A	N/A	N/A	N/A	N/A	177.02	0.8382
01	10017	0112607	Envision Academy for Arts & Technology	0811	-	19.47	23.89	148.31	191.67	0.7715
01	10017	0123968	Community School for Creative Education	1284	71.93	57.92	34.75	-	164.60	0.9089
01	10017	0124172	Yu Ming Charter	1296	544.39	211.85	78.84	-	835.08	0.3538
01	10017	0125567	Urban Montessori Charter	1383	177.39	110.03	30.81	-	318.23	0.3635
01	10017	0129403	Epic Charter	1632	-	-	-	-	-	0
01	10017	0130625	Alternatives in Action	0398	-	-	-	110.29	110.29	0.9647
01	10017	0131581	Oakland Unity Middle School	1707	-	40.15	77.77	-	117.92	0.9007
01	10017	0136101	Connecting Waters Charter School, East Bay	1881	143.84	121.60	76.98	161.49	503.91	0.2769
01	10017	0136226	Opportunity Academy	1888	-	-	-	131.92	131.92	0.5802
01	10017	0137448	Aurum Preparatory Academy	1908	-	46.05	76.18	-	122.23	0.9236
01	10017	0138867	Hayward Collegiate Charter	2027	111.83	73.10	-	-	184.93	0.6559
01	10017	6001788	Cox Academy	0740	292.11	146.48	-	-	438.59	0.9269
01	10017	6002000	Lazear Charter Academy	1464	191.19	153.82	105.61	-	450.62	0.8979
01	61119	0000000	Alameda Unified	N/A	2 583.98	1 918.72	1 193.93	2 867.01	8 563.64	0.3497

### Examples of Unduplicated Pupil Percentage Determination

**Scenario #1:** A district has a UPP of 0.0907, which translates to 9.07 percent. Based upon EC Section 17070.59(b)(2)(D), the district would receive two points.

**Scenario #2:** A district has a UPP of 0.3727, which translates to 37.27 percent. Based upon EC Section 17070.59(b)(C), the district would receive four points.

### EC Section 17070.59(c) - Pupil Enrollment of 200 pupils or fewer

EC Section 17070.59(c) indicates that if a school district has a pupil enrollment of 200 pupils or fewer, it will receive two points.

The district's pupil enrollment is based on the latest California Basic Education Data Systems (CBEDS) that is available approximately the 15th of October each year, Applications filed on or after the 1st of November must include the current school year enrollment. This enrollment will be pursuant to the Form SAB 50-01 instructions for reporting enrollment data.

County superintendents report the enrollment for community school students as reported in April prior to the latest CBEDS report.

The enrollment data must include all of the following, if applicable:

- Off-track and on-track students attending multi-track year round schools
- Students living outside the district's boundaries but attending schools in the district
- Students receiving Classroom-Based Instruction in Charter Schools located within the district boundaries and are enrolled in the same grade levels of type served by the district regardless if the district chartered the school
- Students attending magnet schools
- Community school students

- Students attending independent study

Do not include any of the following:

- Students living in the district's boundaries but attending other districts
- Students attending regional occupational programs
- Students attending preschool programs
- Other students not generally considered K-12 students including adult education students
- Students receiving Classroom-Based Instruction in Charter Schools located within the district boundaries but are enrolled in grade levels or type not served by the district
- Students living inside district boundaries but are receiving Classroom-Based Instruction in Charter Schools located outside the district boundaries
- Students receiving Nonclassroom-Based Instruction
- Juvenile court/court school students
- Special Day Class pupils or
- Continuation high school pupils

*EC Section 17070.59(d) - Project Labor Agreement*

EC Section 17070.59(d)(1) specifies that a school district project that includes the use of a project labor agreement shall receive two points. EC Section 17070.59(d)(2) specifies that for purposes of this subdivision, the definition of "project labor agreement" is pursuant to paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code (PCC). This definition therefore means "...a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is in an agreement described in Section 158(f) of Title 29 of the United States Code."

As such, this added section to EC issues points attributed to districts that do or do not include the use of a project labor agreement, pursuant to PCC Section 2500(b)(1). If the district includes the use of a project labor agreement, it receives two points. If they do not, no points are issued.

*Matching Share Scale Examples*

**Example #1**

A district submits a SFP Modernization funding application on December 12, 2024 that has:

- A gross bonding capacity per total enrollment of \$50,000 (2 points)
- An unduplicated pupil percentage of 55% (6 points)
- Its School District Enrollment is greater than 200 pupils (0 points)
- Its project doesn't include the use of a Project Labor Agreement (0 points)

In total, the district would have 8 points. As a result, the State Share of its Modernization project would be 62%, and the Local Share of the project would be 37%.

**Example #2**

A district submits a SFP New Construction application to OPSC on December 12, 2024 that has:

- A gross bonding capacity per total enrollment of \$56,000 (1 point)
- An unduplicated pupil percentage of 24.50% (2 points)
- Greater than 200 pupils for its school district enrollment (0 points)
- Its project doesn't include the use of a Project Labor Agreement (0 points)

In total, the district would have 3 points. As a result, the State Share of its New Construction project would be 50%, and the Local Share would be 50%. This is due to the district having less than 6 points, which does not meet the new criteria of the sliding match scale.

**Summary of Proposed Amendments to SFP Regulations**

*SFP Regulations Section 1859.77.1 and 1859.79*

To implement the sliding scale matching share system pursuant to the new EC Section 17070.59, OPSC proposes the following amendments:

In Section 1859.77.1 (New Construction District Matching Share Requirement), specify that the existing dollar-for-dollar matching share requirement applies to applications received before October 31, 2024. For applications received on or after October 31, 2024, add a requirement that any funding provided by these Regulations shall require a district matching share contribution pursuant to Education Code Sections 17070.59 and 17072.30.

In Section 1859.79 (Modernization Matching Share Requirement):

- In subsection (b), specify that the existing dollar-for-dollar matching share requirement applies to applications received before October 31, 2024.
- Add a subsection (c) specifying that for applications received on or after October 31, 2024, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share contribution pursuant to Education Code Sections 17070.59 and 170704.16.

*SFP Regulation Section 1859.70.5*

To outline the points process of the new points-based system for determining the district's the local matching share for projects, OPSC proposes adding Section 1859.70.5.



- Subsection (a) outlines the process for determining points allocated as a result of the district's gross bonding capacity divided by the district's enrollment.
- Subsection (b) outlines the process for determining points allocated as a result of the district's unduplicated pupil percentage.
- Subsection (c) outlines the points allocated to school districts with a pupil enrollment of 200 pupils or fewer.
- Finally, subsection (d) indicates the point amount to be allocated to school districts that include the use of a project labor agreement in the current application.

*Application for Funding (Form SAB 50-04) to Include Additional Instructions and Editable Sections for Districts to Include Information Specific to Determination of Matching Shares*

Overall, the form amendments make the form consistent with the additions to EC for determination of the percentage for local matching shares for school districts. To streamline the verification process of applications, OPSC proposes adding a Local Matching Share Determination section under Section 22 of the Form SAB 50-04 where school districts will indicate the following:

- District's total assessed valuation
- District's gross bonding capacity as a dollar amount
- District's unduplicated pupil percentage
- District's current school enrollment as a numerical entry
- Whether the district has entered a Project Labor Agreement as a Yes/No field

This would replace the prior Form SAB 50-04's Section 22, Architect of Record or Licensed Architect Certification. Below, please see the outlined changes:

*Current Form SAB 50-04*

Section 22 (Architect of Record or Licensed Architect Certification)  
Section 23 (Architect of Record or Design Professional Certification)  
Section 24 (Certification)

*Proposed Form SAB 50-04*

Section 22 (Local Matching Share Determination)  
Section 23 (Architect of Record or Licensed Architect Certification)  
Section 24 (Architect of Record or Design Professional Certification)  
Section 25 (Certification)

Additionally, under the new proposed Section 22, OPSC requests that the district indicates its total assessed valuation. The intention with the addition of an entry for the total assessed valuation is to assist with the verification process of the district's total gross bonding capacity.

As such, OPSC proposes renumbering the existing Sections 22 (Architect of Record or Licensed Architect Certification), 23 (Architect of Record or Design Professional Certification), and 24 (Certification), their associated instructions, and references to these sections in the Section 1 instructions and the Certification section.

Attachment A4b includes the proposed amendments to the SFP Regulations and Attachment A4c includes the proposed updates to the Form SAB 50-04 for stakeholder consideration.

## ATTACHMENT A4a

### AUTHORITY All Applications

#### **Education Code (EC) 17070.35 – General Provisions**

(a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

## ATTACHMENT A4a

### AUTHORITY

Applications Received on or before October 30, 2024

#### **EC Section 17072.30 – New Construction Funding Process**

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

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

#### **Education Code Section 17074.16 – Release of funds; applications filed after April 29, 2002**

(a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 60-percent share, and the school district has provided its 40-percent local match. Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required 40-percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) This section shall apply only to an application that was filed after April 29, 2002.

ATTACHMENT A4a

AUTHORITY

Applications Received on or after October 31, 2024

**EC Section 17070.59 – General Provisions**

For purposes of determining the points used to compute the required matching funds from local sources applied pursuant to Sections 17072.30 and 17074.16, the department shall compute the sum of the following point computations applicable to each school district:

(a) For each school district, the department shall divide the district's gross bonding capacity by the district's total enrollment, as determined for purposes of this chapter.

(1) A school district determined to have a gross bonding capacity per enrollment of zero dollars (\$0) to nine thousand nine hundred ninety-nine dollars (\$9,999), inclusive, shall receive four points.

(2) A school district determined to have a gross bonding capacity per enrollment of ten thousand dollars (\$10,000) to nineteen thousand nine hundred ninety-nine dollars (\$19,999), inclusive, shall receive three points.

(3) A school district determined to have a gross bonding capacity per enrollment of twenty thousand dollars (\$20,000) to fifty-four thousand nine hundred ninety-nine dollars (\$54,999), inclusive, shall receive two points.

(4) A school district determined to have a gross bonding capacity per enrollment of fifty-five thousand dollars (\$55,000) or more shall receive one point.

(b) (1) For each school district, the department shall identify each district's unduplicated pupil percentage as determined for purposes of the local control funding formula pursuant to Section 42238.02.

(2) (A) A school district determined to have an unduplicated pupil percentage of between 75 percent and 100 percent shall receive eight points.

(B) A school district determined to have an unduplicated pupil percentage of between 50 percent and 74.99 percent shall receive six points.

(C) A school district determined to have an unduplicated pupil percentage of between 25 percent and 49.99 percent shall receive four points.

(D) A school district determined to have an unduplicated pupil percentage that is 24.99 percent or less shall receive two points.

(c) A school district that has a pupil enrollment of 200 pupils or fewer shall receive two points.

(d) (1) A school district project that includes the use of a project labor agreement shall receive two points.

(2) For purposes of this subdivision, "project labor agreement" has the same meaning as defined in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(e) The department shall draft regulations for consideration by the board to further clarify the requirements of this section.

*(Added by Stats. 2024, Ch. 81, Sec. 6. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

**EC Section 17070.87 – General Provisions**

New construction and modernization applications submitted before October 31, 2024, shall be processed and apportioned in accordance with this chapter, as it read on January 1, 2024.

*(Added by Stats. 2024, Ch. 81, Sec. 7. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

**EC Section 17072.30 – New Construction Funding Process**

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

(b) The board shall adjust a school district's required local contribution pursuant to this section and the school district's associated state contribution required pursuant to Article 4 (commencing with Section 17072.10), as follows:

(1) For a school district determined to have a score of more than 10 points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 45 percent and the associated state contribution pursuant to Article 4 (commencing with Section 17072.10) shall be 55 percent.

(2) For a school district determined to have a score of 9 or 10 points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 47 percent and the associated state contribution pursuant to Article 4 (commencing with Section 17072.10) shall be 53 percent.

(3) For a school district determined to have a score of eight points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 48 percent and the associated state contribution pursuant to Article 4 (commencing with Section 17072.10) shall be 52 percent.

(4) For a school district determined to have a score of six or seven points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 49 percent and the associated state contribution pursuant to Article 4 (commencing with Section 17072.10) shall be 51 percent.

(5) For a school district determined to have a score of less than six points pursuant to Section 17070.59, the required local matching funds pursuant to subdivision (a) shall be 50 percent and the associated state contribution pursuant to Article 4 (commencing with Section 17072.10) shall be 50 percent.

*(Amended by Stats. 2024, Ch. 81, Sec. 10. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

## ATTACHMENT A4a

### **EC Section 17074.16 – Modernization Apportionment**

(a) The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's share, and the school district has provided its required local match.

Subject to the availability of funds, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, including, but not limited to, a project that complies with the Field Act by complying with Section 17280.5, and evidence that the certification by the school district that the required matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund or will be expended by the district by the time of completion of the project, and evidence that the district has entered into a binding contract for the completion of that project. If state funds are insufficient to fund all qualifying school districts, the board shall fund all qualifying school districts in the order in which the application for funding was approved by the board.

(b) The board shall adjust a school district's required local contribution pursuant to this section and the school district's associated state contribution required pursuant to this article as follows:

(1) For a school district determined to have a score of more than 10 points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 35 percent and the associated state contribution pursuant to this article shall be 65 percent.

(2) For a school district determined to have a score of 9 or 10 points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 37 percent and the associated state contribution pursuant to this article shall be 63 percent.

(3) For a school district determined to have a score of eight points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 38 percent and the associated state contribution pursuant to this article shall be 62 percent.

(4) For a school district determined to have a score of six or seven points pursuant to Section 17070.59, the school district's required local matching funds pursuant to subdivision (a) shall be 39 percent and the associated state contribution pursuant to this article shall be 61 percent.

(5) For a school district determined to have a score of less than six points pursuant to Section 17070.59, the required local matching funds pursuant to subdivision (a) shall be 40 percent and the associated state contribution pursuant to this article shall be 60 percent.

*(Amended by Stats. 2024, Ch. 81, Sec. 14. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*

**School Facility Program (SFP) Regulation Section 1859.77.1. New Construction District Matching Share Requirement.**

Any funding provided by these Regulations shall require a district matching share contribution on a dollar-for-dollar basis with the exception of financial hardship provided by Section 1859.81 or any additional grant provided for a district-owned site acquisition cost pursuant to Sections 1859.74.5 or 1859.81.2.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

**SFP Regulation Section 1859.79. Modernization Matching Share Requirement.**

Except in the case of financial hardship as provided in Section 1859.81 a district matching share for a modernization project shall be required as follows:

- (a) If the Approved Application is received on or before April 29, 2002, any Modernization Grant plus any other funding provided by these Regulations shall require a district matching share equal to at least 20 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.
- (b) If the Approved Application is received after April 29, 2002, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share equal to at least 40 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.



## ATTACHMENT A4b

### PROPOSED REGULATIONS

#### Section 1859.77.1. New Construction District Matching Share Requirement.

For applications received before October 31, 2024, Any funding provided by these Regulations shall require a district matching share contribution on a dollar-for-dollar basis with the exception of financial hardship provided by Section 1859.81 or any additional grant provided for a district-owned site acquisition cost pursuant to Sections 1859.74.5 or 1859.81.2.

For applications received on or after October 31, 2024, any funding provided by these Regulations shall require a district matching share contribution pursuant to Education Code Sections 17070.59 and 17072.30, with the exception of financial hardship provided by Section 1859.81 or any additional grant provided for a district-owned site acquisition cost pursuant to Sections 1859.74.5 or 1859.81.2.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.30, 17074.32 and 17077.10, Education Code.

#### Section 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81 a district matching share for a modernization project shall be required as follows:

- (a) If the Approved Application is received on or before April 29, 2002, any Modernization Grant plus any other funding provided by these Regulations shall require a district matching share equal to at least 20 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.
- (b) If the Approved Application is received after April 29, 2002 and before October 31, 2024, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share equal to at least 40 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.
- (c) If the Approved Application is received on or after October 31, 2024, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share contribution pursuant to Education Code Sections 17070.59 and 17074.16.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17074.15, 17074.16, 17074.32 and 17077.10, Education Code.

## ATTACHMENT A4b

### Section 1859.70.5 Points For Local Matching Share Determination

This Regulation shall only apply to Approved Applications received on or after October 31, 2024 for New Construction and Modernization Grants.

The points used to compute the required matching funds for a New Construction and Modernization Grants request shall be based on the following computations. A project shall receive points for a local matching share based on the total of (a), (b), (c) and (d):

- (a) Points for the district's gross bonding capacity divided by the district's total enrollment at the time OPSC notifies the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04:
  - (1) Four points for a district determined to have a gross bonding capacity per enrollment of zero dollars (\$0) to nine thousand nine hundred ninety-nine dollars (\$9,999), inclusive.
  - (2) Three points for a district determined to have a gross bonding capacity per enrollment of ten thousand dollars (\$10,000) to nineteen thousand nine hundred ninety-nine dollars (\$19,999), inclusive.
  - (3) Two points for a district determined to have a gross bonding capacity per enrollment of twenty thousand dollars (\$20,000) to fifty-four thousand nine hundred ninety-nine dollars (\$54,999), inclusive.
  - (4) One point for a school district determined to have a gross bonding capacity per enrollment of fifty-five thousand dollars (\$55,000) or more.
- (b) Points for the district's unduplicated pupil percentage at the time OPSC notifies the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04, based upon:
  - (1) An unduplicated pupil percentage as determined for purposes of the local control funding formula pursuant to EC Section 42238.02
    - (A) Eight points for a district determined to have an unduplicated pupil percentage of between 75 percent and 100 percent, inclusive.
    - (B) Six points for a district determined to have an unduplicated pupil percentage of between 50 percent and 74.99 percent, inclusive.
    - (C) Four points for a district determined to have an unduplicated pupil percentage of between 25 percent and 49.99 percent, inclusive.
    - (D) Two points for a district determined to have an unduplicated pupil percentage that is 24.99 percent or less.
  - (c) Two points for a district with a pupil enrollment of 200 pupils or fewer at the time OPSC notifies the School District in writing that OPSC is scheduled to begin processing the School District's Form SAB 50-04.
  - (d) Two points for a school project that includes the use of a project labor agreement in the application being processed.

## ATTACHMENT A4c

### *Application for Funding (Form SAB 50-04)*

#### SPECIFIC INSTRUCTIONS

##### **1. Type of Application**

Check the appropriate box that indicates the type of School Facility Program (SFP) grant the district is requesting for purposes of new construction, modernization, a separate design and/or site apportionment, site apportionment as an environmental hardship or New Construction (Final Apportionment). If the application is for the modernization of school facilities and includes facilities that are eligible for an additional apportionment pursuant to Section 1859.78.8, include a site diagram with this application that specifies the age of each facility eligible for modernization. The diagram should also indicate the date of its original DSA plan approval and the date the facility received its prior modernization apportionment. If known include the project modernization number on the diagram. If the application is for modernization of a California School for the Deaf or Blind, the CDE shall check the box identified as Modernization of California Schools for the Deaf/Blind. If the request is for a separate design apportionment, the CDE shall check the appropriate box. If the eligibility for this project was established as a result of a health and safety threat pursuant to Section 1859.82.1, or a seismic replacement or seismic rehabilitation for the Most Vulnerable Category 2 Buildings pursuant to Section 1859.82.2, and/or the request is for a conceptual approval for a Facility Hardship application pursuant to Section 1859.82.3(a) or a Seismic Mitigation Program application pursuant to Section 1859.82.3(b), check the appropriate box(es).

If this request is for an addition to an existing site and advance funding for the evaluation and RA costs, check the appropriate box and refer to Section 1859.74.4.

If this request is for an Overcrowding Relief Grant, check the New Construction (Overcrowding Relief Grant) box.

If this request is to convert a Preliminary Apportionment or a Preliminary Charter School Apportionment to a Final Apportionment, check the New Construction Final Apportionment, New Construction Final Charter School Apportionment or the Rehabilitation Final Charter School Apportionment box, as appropriate.

If the district is requesting a separate site and/or design apportionment, complete boxes 2a, 3, 4, the site acquisition data in box 5 (d and e), and boxes 13, 14, 15, 16, and ~~24~~ 25 only.

##### **22. Local Matching Share Determination**

Enter the following:

a. The district's total assessed valuation.

## ATTACHMENT A4c

b. The district's gross bonding capacity, rounded to the nearest whole dollar. To calculate this, take the total assessed valuation and multiply that by 1.25% for non-unified school districts or 2.5% for unified school districts, rounded to two decimal places.

c. The district's unduplicated pupil percentage as determined for purposes of the local control funding formula pursuant to Education Code Section 42238.02, rounded to two decimal places.

d. The district's pupil enrollment based on the latest California Basic Education Data Systems (CBEDS) that is available approximately October 15<sup>th</sup> of each year. Applications filed on or after November 1<sup>st</sup> must include the current school year enrollment. This enrollment will be pursuant to the Form SAB 50-01 instructions for reporting enrollment data.

County superintendents report the enrollment for community school students as reported in April prior to the latest CBEDS report.

The enrollment data must include all of the following, if applicable:

- Off-track and on-track students attending multi-track year round schools
- Students living outside the district's boundaries but attending schools in the district
- Students receiving Classroom-Based Instruction in Charter Schools located within the district boundaries and are enrolled in the same grade levels or type served by the district regardless if the district chartered the school
- Students attending magnet schools
- Community school students
- Students attending independent study

Do not include any of the following:

- Students living in the district's boundaries but attending other districts
- Students attending regional occupational programs
- Students attending preschool programs
- Other students not generally considered K-12 students including adult education students
- Students receiving Classroom-Based Instruction in Charter Schools located within the district boundaries but are enrolled in grade levels or type not served by the district
- Students living inside district boundaries but are receiving Classroom-Based Instruction in Charter Schools located outside the district boundaries
- Students receiving Nonclassroom-Based Instruction
- Juvenile court/court school students
- Special Day Class pupils or
- Continuation high school pupils

e. Check Yes or No to indicate whether the project includes the use of a Project Labor Agreement for this application. If the District indicates it intends to have a Project Labor

## ATTACHMENT A4c

Agreement, but does not yet, it will be audited for compliance and the funding will be adjusted accordingly if it does not have a Project Labor Agreement.

### **~~22.~~ 23. Architect of Record or Licensed Architect Certification**

The architect of record or the licensed architect must complete this section.

### **~~23.~~ 24. Architect of Record or Design Professional Certification**

The architect of record or the appropriate design professional must complete this section.

### **~~24.~~ 25. Certification**

The district representative must complete this section. For additional information regarding district certifications, refer to the SFP handbook located on the OPSC web site at [www.dgs.ca.gov/opsc](http://www.dgs.ca.gov/opsc).

ATTACHMENT A4c

*Application for Funding (Form SAB 50-04)*

**22. Local Matching Share Determination**

For each line item request, complete the following:

a. Assessed valuation: \_\_\_\_\_

b. District's gross bonding capacity, rounded to nearest whole dollar: \_\_\_\_\_

c. District's unduplicated pupil percentage, rounded to two decimal places: \_\_\_\_\_

d. District's enrollment? \_\_\_\_\_

e. Does this project include the use of a Project Labor Agreement?    ☐Yes    ☐No

**23-24. Architect of Record or Design Professional Certification**

....

**24-25. Certification**

I certify, as the District Representative, that the information reported on this form, with the exception of items 22-23 and 23, 24, is true and correct and that:

....

## ATTACHMENT A5

### OFFICE OF PUBLIC SCHOOL CONSTRUCTION STAKEHOLDER MEETING January 30, 2025

#### PROPOSED REGULATIONS TO IMPLEMENT A MODERNIZATION GRANT FOR 75-YEAR-OLD BUILDINGS

##### PURPOSE

To discuss and receive stakeholder feedback regarding proposed regulatory amendments resulting from Assembly Bill (AB) 247, the Kindergarten through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024 (Proposition 2), which was approved by a majority of California's voters on November 5, 2024, related to the implementation of an additional grant for 75-year-old buildings.

##### AUTHORITY

See Attachment A5a.

##### BACKGROUND

Proposition 2 adds Education Code (EC) Section 17074.265 to provide a modernization grant for projects in which the scope of the work includes the demolition and construction of building(s) at least 75 years old.

EC 17074.265 adds to the existing SFP Modernization Program as follows:

(a) Notwithstanding Article 6 (commencing with Section 17073.10), a school district shall be eligible to receive a modernization apportionment to demolish and construct a building or buildings on an existing schoolsite if both of the following conditions are met:

- (1) The building or buildings to be replaced are at least 75 years old.
  - (2) The school district provides a cost-benefit analysis that indicates the total cost to modernize the building or buildings is at least 50 percent of the current replacement cost, as defined by the board, of the building or buildings. The cost-benefit analysis may include applicable site development costs.
- (b) A project that meets the requirements of subdivision (a) shall be eligible for a grant equal to the grant provided under Section 17072.10 multiplied by the capacity of the building or buildings calculated pursuant to Section 17071.25.
- (c) The board may adopt regulations to implement this section.

## STAFF ANALYSIS/DISCUSSION

The intention of staff is to provide initial thoughts and interpretation of the amended statute, raise questions on potential processing details to prompt and receive feedback from stakeholders, address any questions and present proposed regulations in a future stakeholder meeting.

### *Augmentation to the Modernization Grant*

Similar to the grants provided for buildings 50 years or older, the grants for 75-year-old buildings would be provided in lieu of the typical per-pupil base grant. For these 75-year-old buildings, the grants can only be used for demolition and replacement. EC stipulates that the district will receive an increased grant amount based on the pupil grant amount designated for new construction projects under EC 17072.10. Additionally, when determining the age of these 75-year-old buildings, staff proposes using the same methodology as the standard SFP modernization eligibility.

EC Section 17074.265 appears to place emphasis on providing more state funds in order to replace buildings that have become 75 years of age and that it is more cost efficient to replace the building than it is to modernize it. EC Section 17074.265 differs from current statute and SFP Regulation Section 1859.78.8. Under current regulation, funding is provided to districts for buildings that are at least 20 or 25 years old, with facilities becoming eligible for modernization grants again every 20 or 25 years thereafter. However, to qualify for the 75-year-old grant, buildings that have reached 75 years of age must be demolished and replaced rather than modernized.

In addition, this grant would not replace the modernization base grant and/or 50-year-old grants, but instead would provide a grant alternative for districts to now replace buildings that have reached 75 years of age. Staff suggests that because there is the potential that a school site will have some buildings that are 50 years of age while other buildings have reached 75 years of age at the same time, the district may utilize both grants on a hybrid modernization project. The modernization base grant and the 50-year-old grant regulations provide the flexibility for the grants to be used towards any eligible modernization work throughout the site. However, the 75-year-old grant could only be used on the building that has generated the eligibility. For the scope of work pertaining to replacing buildings that are at least 75 years old, the regular modernization eligibility and 50-year-old grants could not be used in addition to the 75-year-old grant.

For reimbursement projects, the following would not qualify for the 75-year-old grant:

- The building was replaced using local funds and was not at least 75 years old at the time it was replaced.



- The building was replaced in any State funded project, irrespective of whether it was a New Construction or Modernization type of project. This exclusion is to prevent double funding from the State.

*Building Specific – Eligible Project Scope*

As the building being replaced must be at least 75 years old to generate eligibility to receive this grant, the apportionment can only be used for replacing a building that meets this condition. The district must submit plans showing the demolition of the building(s) that were at least 75 years at the time of demolishment and Division of State Architect (DSA) approved plans must show the construction of the new building space. Staff will review the plans to confirm the demolished building age requirements of being at least 75 years old have been met.

In addition, staff considers the language in EC Section 17074.265 indicating “buildings”, to be specific to permanent buildings and not portable buildings. EC Sections 17073.15 and 17074.10(f) already provide a second round of funding for buildings reaching another 20 or 25 years of age past initial apportionment, with the emphasis on replacing portable classroom buildings. As portables are to be replaced through the second round of modernization funding, OPSC interprets that the 75-year-old funding will only apply to the replacement of permanent buildings and not portable classroom buildings.

For a district that qualifies for 50-year-old pupil grants, the grants could be utilized to fund any work throughout the campus, regardless of whether the plans include the building(s) that generated the eligibility. In the instance of 75-year-old grants, they are designated only for building specific funding. Therefore, staff suggests that OPSC processing for this grant should be building focused, in contrast to the site-specific approach used for funding 50-year-old buildings. If the submitted plans include only the modernization of a building that is 75 years old, and it is not being replaced, the project does not meet EC requirements and is therefore ineligible for the 75-year-old grant.

*Required Cost-Benefit Analysis to Determine Funding Eligibility*

One of the conditions for receiving funding requires the use of a Cost Benefit Analysis (CBA) to determine whether the costs associated with the modernization of a 75-year-old building will be at least 50 percent of what the costs would be to demolish and build it back.

To verify the CBA, the district will need to provide a unit-cost amount that conforms to the Sierra West Red Book for Modernization at F1 Level of difficulty. However, if there is other modernization work in the approved plans, this grant will only be applicable to the 75-year-old building. This cost estimate will then be divided by the Total Replacement Cost as determined in SFP regulations.

Staff proposes to use the following table that displays the cost-benefit calculation method used in the Facility Hardship Program, pursuant to SFP Regulation Section 1859.82.1.

**Table 1**

<b>Cost-Benefit Analysis</b>			
	Existing Square Footage (Demolished Building Space)	Current Replacement Cost per Square Foot*	Total Current Replacement Cost (CRC)
Permanent Toilets (includes Shower/Locker Space)	Verify from DSA plans	\$932	Existing sq. ft. X Current Replacement Cost per sq. ft.
Permanent Other (includes Classroom space)	Verify from DSA plans	\$517	Existing sq. ft. X Current Replacement Cost per sq. ft.
<b>Total</b>			<b>Total Toilet and Other CRC</b>

\* Based on the 2025 Annual Adjustment Index for Current Replacement Cost.

As the district will need to provide a cost estimate showing the total costs to modernize the building, those costs will then be divided by the total Current Replacement Costs to determine the resulting percentage. If the percentage for the cost to modernize is at least 50 percent of the replacement cost, the project will be eligible for 75-year-old funding, as show in the table below.

Total Cost to Modernize / Total Current Replacement Costs $\geq$ 50%	Project is eligible
--	---------------------

***Build Back of Demolished Classrooms and/or Ancillary Space***

While new construction and modernization eligibility processing through SFP is separated by guidelines tailored to each individual program, the new EC Section appears to combine certain aspects to ensure that a district is able to replace buildings that are 75 years old. EC Section 17074.265 specifies that the calculation for grants that will fund these projects is to take the grant provided in EC Section 17072.10 (per-unhoused pupil grant amount provided for new construction projects) and multiply it by the capacity of the building(s) pursuant EC Section 17071.25 (eligibility determination guidelines for modernization projects).

However, staff proposes that EC Section 17071.25 will need to be addressed only through determining what the building looked like during eligibility establishment by referencing the original snapshot. Because applications requesting the 75-year-old

grant will need to be building specific, only the building being worked on will be considered with regards to capacity, and not the entire campus to determine the pupil grant amount a district is eligible for. Staff suggests that “capacity” as indicated in the new EC will, for processing purposes, reference the new construction per-pupil grant amount be multiplied by the loading standards per grade level of the classroom(s) in the 75-year-old building(s). The usage of the building space should also be considered in instances where there are both classrooms and ancillary space within the same building.

### *Classroom Spaces*

SFP Regulation 1859.79.2 indicates that for modernization funding, the construction of new facilities is only allowable in very limited cases. However, the new EC Section 17074.265 allows for 75-year-old buildings to be both demolished completely and built back. Staff proposes that while a new facility will be built using 75-year-old grant funding, SFP Regulations regarding how space may be constructed back under the modernization program will still need to be followed.

SFP Regulation Section 1859.79.2 indicates that a modernization project that includes the replacement of buildings in like kind, will not be allowed to build more classrooms or square footage within the replacement area than were there originally. When replacing buildings that have reached 75 years of age, a district may build back the same number of classrooms in that building in like kind or build back fewer and have a net loss of classrooms. If any classroom space is being built back as non-classroom space, then the grant amount should be calculated as ancillary space. However, any increase in classrooms will result in a reduction of the new construction eligibility baseline dependent on the classroom capacity for the additional room(s). In addition, if the build back results in an increase in square footage from the original building area, that additional square footage must be funded exclusively from district funds outside of the SFP project, beyond the district’s required matching share.

As the calculation for 75-year-old classroom buildings will use the per-pupil grant amount provided for new construction projects with the loading capacity of each classroom within the building, staff proposes the following calculation for how a 75-year-old building that has only classrooms will be determined:

Number of Classrooms** X Classroom Loading Capacity*** =	# of 75-Year-Old Pupil Grants
--	-------------------------------

\*\* In the 75-year-old building.

\*\*\* 25 pupils per classroom in grades K-6, 27 pupils per classroom in grades 7-12, 13 pupils in Non-Severe classrooms, and 9 pupils in Severe classrooms.

### *Ancillary Spaces*

When considering the replacement of a 75-year-old building that is used for ancillary space instead of classroom space, staff proposes that SFP Regulation 1859.77.3(a) for Minimum Essential Facilities (MEF) be utilized to determine the

appropriate pupil grants. SFP Regulation allows a district to request grants “that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium, Multipurpose/Gymnasium Hybrid, and/or library, or for an Alternative Education school to construct a multipurpose/gymnasium, library, counseling offices, and/or conference rooms.” By applying the guidelines of a MEF for 75-year-old buildings, staff will be able to calculate the capacity of the building in alignment with EC guidelines that require the use of the new construction pupil grant amount against the capacity of the building to fund the replacement.

The following example shows the potential calculation for a building that includes ancillary space:

Example: Calculate the Ancillary Space				
Enter the total number of square footages being like-kind replaced.				
TOTAL:	<input type="text"/>	Square Feet		
Calculate "Other" square footage into a dollar amount:				
OTHER*:	\$517	x	<input type="text"/>	= <input type="text"/>
*Based on the Annual CCI				
Convert Dollars to pupil grants:				
Divide dollar amount in step above by the per pupil allowance for the grade level being requested.				
Total Pupil Grants for Ancillary Space:	<input type="text"/>			
	<hr/>	Total Allowable Grants		

### *Both Ancillary and Classroom Space*

Staff proposes that in the instance a building includes both classroom space and ancillary space, the MEF calculations be adjusted to account for both spaces. By doing so, staff would be able to accurately determine the capacity for a building that is reliant on both square footages and classroom space. The following example shows the potential calculation:

**Example: Calculate the capacity of a building with both Classroom and Ancillary Space**

Number of Classrooms:

Loading Capacity:

TOTAL Pupil Grants for Classrooms being constructed:  Pupils

Enter the total number of square footages being like-kind replaced minus the total classroom construction space as verified in the plans.

TOTAL:  Square Feet

Calculate "Other" square footage into a dollar amount:

OTHER\*:  \$517 x  =  Total Dollar Amount for

\*Based on the Annual CCI

Convert Dollars to pupil grants:  
Divide dollar amount in step above by the per pupil allowance for the grade level being requested.

Total Pupil Grants for Ancillary Space:

Total Pupil Grants for Classroom Space:

Total Allowable Grants

### *Requesting 50-year-old Utilities Within the Project*

When a district is demolishing and building back a building that has reached 75 years of age, EC Section 17074.265 indicates that the grant be equivalent to the new construction grant amount. Therefore, the eligible costs included in the project should take into consideration the conditions for new construction funding. Staff proposes that EC Section 17072.35 for new construction funding already takes into account the costs associated with site development by indicating: "a grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, **site acquisition and development** . . ." Therefore, the 50-year-old utility grant should not be provided for a 75-year-old building that is being replaced as the new construction grant being provided already accounts for those costs.

### *Adjustment to Modernization Eligibility as a Result of Replaced Facility Spaces*

As 75-year-old buildings are being demolished and replaced, similar to other programs such as the Overcrowded Relief Grant, Facility Hardship program, and locally funded projects, staff proposes that the SFP Regulation Section 1859.61 be amended to account for these facilities being replaced as well.

Therefore, the modernization eligibility would be impacted by the amended language by the following thoughts:

- The modernization eligibility's snapshot will not be altered, and the total classroom inventory and square footages will remain the same.
- The age of the 75-year-old buildings that were demolished will be reset to the Apportionment date of the modernization project as the new starting point for

those buildings. This will be accomplished through a one-time adjustment to the modernization eligibility that will ensure the site continues to generate modernization eligibility in a consistent practice.

## ATTACHMENT A5a

### AUTHORITY All Applications

#### **Education Code (EC) 17070.35 – General Provisions**

(a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

#### **EC Section 17072.10 – New Construction Grant Eligibility Determination**

(a) The board shall determine the maximum total new construction grant eligibility of an applicant by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each

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school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:

- (1) Five thousand two hundred dollars (\$5,200) for elementary school pupils.
  - (2) Five thousand five hundred dollars (\$5,500) for middle school pupils.
  - (3) Seven thousand two hundred dollars (\$7,200) for high school pupils.
- (b) The board annually shall adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.
- (c) Regulations adopted by the board prior to July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026, as amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15, shall continue in effect. An increase made to the per-unhoused-pupil grant amounts set forth in subdivision (a), on or after January 1, 2010, including, but not limited to, those made pursuant to Section 17072.11 on or after January 1, 2010, also shall be made to the per-unhoused-pupil who is a qualifying individual with exceptional needs grant amounts established pursuant to this subdivision. If an increase to the per-unhoused-pupil grant amounts differentiates among the pupil groups based on whether the pupils are elementary, middle, or high school pupils, the Office of Public School Construction shall recommend to the board, within 60 days of that increase, a methodology to adjust the per-unhoused-pupil grant amount for pupils who are qualifying individuals with exceptional needs so that those adjustments appropriately reflect the increases.
- (d) The board may establish a single supplemental per-unhoused-pupil grant in addition to the amounts specified in subdivision (a) based on the statewide average marginal difference in costs in instances where a project requires multilevel school facilities due to limited acreage. The application of a school district shall demonstrate that a practical alternative site is not available.
- (e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to seven thousand five hundred dollars (\$7,500) for any new construction project assistance. The amount of the supplemental apportionment authorized pursuant to this subdivision shall be adjusted in 2008 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

### **EC Section 17071.25 – Existing School Building Capacity**

- (a) The existing school building capacity in the applicant school district or, where appropriate, in the attendance area, at the time of initial application shall be calculated pursuant to the following formula:
- (1) Identify by grade level all permanent teaching stations existing in the school district or, where appropriate, the attendance area. For the purposes of this section, “teaching station” means any space that was constructed or



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reconstructed to serve as an area in which to provide pupil instruction, but shall not include portable buildings, except as provided in Section 17071.30.

(2)(A) The assumed capacity of each calculated teaching station pursuant to paragraph (1) shall be 25 pupils for each teaching station used for kindergarten or for grades 1 to 6, inclusive, and 27 pupils for each teaching station used for grades 7 to 12, inclusive.

(B) On or after January 1, 2000, the board may adopt or amend regulations adjusting the assumed capacity set forth in this subparagraph as appropriate for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst pursuant to Section 17072.15. These special day class capacity adjustments and any adjustment of existing school capacity related to changes in the assumed capacity of special day class teaching stations shall be approved by the Director of Finance prior to implementation.

### **EC Section 17072.35 – New Construction Funding Process**

A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use. A grant for new construction may also be used for the costs of designs and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high performance schools.

### **EC Section 17073.15 – Modernization Eligibility Determination**

A school district is eligible to receive an apportionment for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old. A school district is eligible to receive an additional apportionment for the modernization of a permanent school building every 25 years after the date of the previous apportionment or a portable classroom every 20 years after the previous apportionment.

**EC Section 17074.10(f) – Modernization Apportionment**

(a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in school buildings that satisfy the requirements of Section 17073.15:

(1) Two thousand two hundred forty-six dollars (\$2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars (\$2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars (\$3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

(c) The board may adopt regulations to be effective until July 1, 2000, that adjust the amounts identified in this section for qualifying individuals with exceptional needs, as defined in Section 56026. The regulations shall be amended after July 1, 2000, in consideration of the recommendations provided pursuant to Section 17072.15.

(d) It is the intent of the Legislature that the amounts provided pursuant to this article for school modernization do not include funding for administrative and overhead costs.

(e) For a school district having an enrollment of 2,500 or less for the prior fiscal year, the board may approve a supplemental apportionment of up to two thousand five hundred dollars (\$2,500) for any modernization project assistance. The amount of the supplemental apportionment shall be adjusted in 2001 and every year thereafter by an amount equal to the percentage adjustment for class B construction.

(f) For a portable classroom that is eligible for a second modernization, the board shall require the school district to use the modernization funds to replace the portable classroom and to certify that the existing eligible portable classroom will be removed from any classroom use, unless the school district is able to document that modernizing the portable classroom is a better use of public resources. The capacity and eligibility of the school district shall not be adjusted for replacing a portable classroom pursuant to this subdivision and Section 17073.15.

**School Facility Program (SFP) Regulation Section 1859.61. Adjustments to the Modernization Baseline Eligibility**

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project or a CSFP Rehabilitation project at the specific site.

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- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
  - (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
  - (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Sections 1859.90, 1859.90.3 and 1859.105.
  - (e) Adjusted as a result of errors or omissions by the district or by the OPSC.
  - (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.
  - (g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
  - (h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
  - (i) Increased for facilities previously modernized with State funds, which qualify for an additional modernization apportionment pursuant to Section 1859.78.8.
  - (j) Decreased for facilities that were deemed eligible for modernization pursuant to Sections 1859.60 and 1859.61(d) and subsequently replaced, or will be replaced under a signed contract for construction or acquisition of facilities, in a project funded by the district without participation from the State.
  - (k) Adjusted as a result of replaced eligible portables funded with the Overcrowding Relief Grant, pursuant to Education Code Section 17079, et seq.
  - (l) Adjusted upon Board receipt of the local school board resolution acknowledging that the buildings have been removed from K-12 use, as follows:
    - (1) School Buildings and/or classrooms that receive replacement funding via the New Construction Grant or the Facility Hardship Square Footage Grant pursuant to Section 1859.82.1 or Section 1859.82.2
    - (2) School Buildings and/or classrooms that were originally included in the district's baseline eligibility and were later demolished or removed from classroom use due to health and/or safety concerns that meet the requirements of Regulation Section 1859.82.1 or 1859.82.2 as verified by OPSC, except the district did not have the current enrollment to support the replacement and funding of those School Buildings and/or classrooms. Buildings and/or classrooms removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.
- For (l)(1) the building age shall be reset to the date of the Apportionment for the corresponding project. For (l)(2) the building shall be removed from the classroom inventory used to establish modernization eligibility at the site.

**SFP Regulation Section 1859.77.3(a) Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003**

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium, Multipurpose/Gymnasium Hybrid, and/or library, or for an Alternative Education school to construct a multipurpose/gymnasium, library, counseling offices, and/or conference rooms, at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
- (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
      2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
  - (2) The existing school site was not constructed under the SFP.
  - (3) The proposed project includes no more than eight classrooms.
  - (4) Grants requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.
  - (5) For purposes of this Section, a Multipurpose/Gymnasium Hybrid is considered to be both a multipurpose and a gymnasium. A school site with a

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middle school and/or high school pupils is eligible for one multipurpose and one gymnasium; therefore, if a school site has an adequate multipurpose and an adequate gymnasium, it is not eligible for a Multipurpose/Gymnasium Hybrid under this Section.

(6) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), except for Alternative Education Schools. For Alternative Education Schools, refer to the following:

ALTERNATIVE EDUCATION			
Support Facility	Existing Site Plus Proposed Project Contain 1 or 2 Classrooms	Existing Site Plus Proposed Project Contain 3 to 10 Classrooms *	Existing Site Plus Proposed Project Contain 11 or More Classrooms*
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft., maximum of 18, 000 sq. ft.
Counseling Offices, and/or Conference Rooms	1,000 sq. ft. Combined Total	1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

\*The proposed project cannot include more than eight classrooms.

(7) The maximum excess pupil amount being requested for this type of use of grants request, is calculated by the following:

(A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, as follows:

1. For Alternative Education Schools, refer to the chart above.
2. For a multipurpose room, gymnasium, and/or library, refer to the chart in Section 1859.82(b).
3. For a Multipurpose/Gym Hybrid:
  - a. For school sites with middle school pupils, use 15.2 square feet per pupil, with a minimum of 8,056 square feet and a maximum of 18,848 square feet.
  - b. For school sites with high school pupils, use 18.6 square feet per pupil, with a minimum of 10,193 square feet and a maximum of 21,874 square feet.

(B) Multiply the product in (a)(7)(A) above by the per square foot grant amount of \$154. This per square foot grant amount will be adjusted in the manner prescribed in Section 1859.71.

(C) Divide the product in (a)(7)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.

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**SFP Regulation Section 1859.78.8. Modernization Grant for Facilities Previously Modernized with State Funds.**

The Board shall provide an additional apportionment provided by Education Code 17074.10(a) and Section 1859.78.3, for facilities previously modernized with State funds as follows:

An additional apportionment will be provided for the modernization of a permanent school building every 25 years following the date of its previous State modernization apportionment.

(b) In the case of portable classrooms, an additional apportionment will be permitted every 20 years after the date of its previous State modernization apportionment provided the modernization funds will be used to replace the portable classroom(s) and the school district must certify that the portable classrooms will be removed from any classroom use unless acceptable documentation is provided by the district indicating that the modernization of the portable classrooms is a better use of public resources.

If the previous SFP modernization apportionment includes both permanent and portable facilities, the number of pupil grants that will be added to the site's baseline eligibility shall be determined by the percentage of permanent or portable facilities identified on the Form SAB 50-03 that generated the initial eligibility.

The capacity and eligibility of the school district will not be adjusted for the replacement of the portable classroom pursuant to Education Code Sections 17074.10(f) and 17073.15.

**SFP Regulation Section 1859.79.2. Use of Modernization Grant Funds.**

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(i) and may also be utilized for other purposes as set forth in Education Code Section 100420(c), and Labor Code Section 1771.3(a) in effect on January 1, 2012 through June 19, 2014. Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP.

Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

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- (1) Replacement, repair or additions to existing site development.
- (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent. Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

### **SFP Regulation Section 1859.82.1 (2)(D) Facility Hardship Program.**

"School Building" for the purposes of this Section shall have the same definition as Education Code Section 17283 and shall also exclude any districtwide administrative facilities.

A district is eligible for Facility Hardship funding to repair, replace, or construct School Buildings or related required components that are currently causing a health and safety threat to the students and/or staff. Projects solely to replace components that have reached the end of their useful life, perform routine maintenance or repair, issues resulting from the deferment of routine maintenance or repair, lack of current code compliance, or the addition of components that were not previously existing, do not meet the qualifying criteria of the program. However, this work may be incorporated into a qualifying Facility Hardship application if it is required to be completed to gain DSA approval.

Beginning 90 days after the effective date of this Section [November 29, 2020], Approved Applications requesting Facility Hardship Program funding shall be submitted to OPSC within 12 months of DSA approval for the scope of work mitigating the identified health and safety threat. If the project does not require DSA approval, then the Approved Application for funding must be received within the 6 months following project completion, as demonstrated by the earliest of the following: the date that the notice of completion of the project has been filed; occupancy of any portion of the project Facility; or when the School Buildings or components of the School Buildings in the project are currently in use by the district. If a district demonstrates that extreme or unusual circumstances prevented the submission of an eligible application within the applicable timeline outlined above, OPSC may allow up to an additional 6 months for submittal.

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(a) Districts may qualify for funding to replace or construct new School Buildings. Factors to be considered by the Board to determine eligibility for Facility Hardship program replacement funding may include, but are not limited to:

(1) Damage or loss as a result of a natural disaster such as a fire, flood, or earthquake.

(2) Proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, or industrial facility.

(3) Adverse air quality.

(4) Structural deficiency to the School Building, and

(5) Site conditions such as faulting, toxic soil, or liquefaction.

(b) To qualify for replacement funding for School Buildings, the district must submit an Approved Application for funding and either (1) or (2) below:

(1) For School Buildings that are lost, destroyed, or unable to be repaired, the district must submit:

(A) A report from an industry specialist (a person or entity that specializes in the specific area of expertise for that health and safety issue) that states that the only way to mitigate the health and safety threat is to replace the School Building(s).

(B) Documentation which demonstrates that the facilities in the project must be reconstructed in order to house the current enrollment of the district.

(2) For permanent School Buildings where the cost to rehabilitate the School Building(s) exceeds 50 percent of the Current Replacement Cost, or for Portable Classrooms where the cost to rehabilitate exceeds the Portable Classroom Replacement Grant or Portable Toilet Replacement Grant, the district must submit:

(A) A report by an industry specialist (a person or entity that specializes in the specific area of expertise for that health and safety issue) that outlines the minimum work to mitigate the health and safety threat and remain in the existing School Building. If the threat is due to the presence of mold, OPSC must conduct a site visit to discuss the scope of the project prior to remediation. If the remediation is done prior to a site visit, the application will be ineligible for funding. Requests for asbestos mitigation must include lab test results indicating the asbestos is currently friable, and provides the location, material, and testing methods used.

(B) A letter of concurrence from a governmental agency that has jurisdiction or expertise over the field in which the health and safety threat originates. The letter must concur with the industry specialist report on both 1. and 2. below:

1. An imminent health and safety threat to student and/or staff exists.

2. The mitigation measures outlined in the industry specialist's report are the minimum measures required to mitigate the threat and allow the continued use of the School Building(s).

(C) Applications must include a detailed Form SAB 58-01 that meets the following requirements:

1. The Form SAB 58-01 must use the most current edition of the Current Construction Remodeling and Repair Cost publication by Sierra West



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Publishing. For all materials or items listed in the most current edition of the Current Construction Remodeling and Repair Cost publication, amounts entered on the Form SAB 58-01 must use the provided unit costs. For individual materials or items that are not contained in the most current edition of the Current Construction Remodeling and Repair publication, the district must provide supporting documentation for OPSC to review the requested unit cost.

2. All requested line items shall include Construction Specifications Institute reference number (CSI #), description, F3 total unit cost amount, and quantity. Any line items that include amounts in lump-sum formats will not be reviewed or approved.

3. The work in the Form SAB 58-01 shall match the work outlined in the report provided by the industry specialist (a person or entity that specializes in the specific area of expertise for that health and safety issue) for the minimum work required to mitigate the health and safety threat.

4. The estimate submitted to OPSC shall be for the same scope of work reviewed and concurred to by DSA, and that is referenced in the governmental concurrence letter for the project.

5. The Form SAB 58-01 may also include any work required by DSA to obtain plan approval.

(D) A cost/benefit analysis that demonstrates the minimum work required to mitigate the health and safety threat and remain in the School Building exceeds 50 percent of the Current Replacement Cost of the existing Square Footage of the School Building. The minimum work required may include work required by DSA to gain approval for the mitigation project.

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AUTHORITY

Applications Received on or after October 31, 2024

**EC Section 17074.265 – Modernization Apportionment**

(a) Notwithstanding Article 6 (commencing with Section 17073.10), a school district shall be eligible to receive a modernization apportionment to demolish and construct a building or buildings on an existing schoolsite if both of the following conditions are met:

(1) The building or buildings to be replaced are at least 75 years old.

(2) The school district provides a cost-benefit analysis that indicates the total cost to modernize the building or buildings is at least 50 percent of the current replacement cost, as defined by the board, of the building or buildings. The cost-benefit analysis may include applicable site development costs.

(b) A project that meets the requirements of subdivision (a) shall be eligible for a grant equal to the grant provided under Section 17072.10 multiplied by the capacity of the building or buildings calculated pursuant to Section 17071.25.

(c) The board may adopt regulations to implement this section.

*(Added by Stats. 2024, Ch. 81, Sec. 16. (AB 247) Effective July 3, 2024. Operative November 6, 2024, pursuant to Sec. 30 of Ch. 81.)*