

**State of California
Office of Administrative Law**

In re:
State Allocation Board

Regulatory Action:

Title 2, California Code of Regulations

Amend sections: 1859.2, 1859.82

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

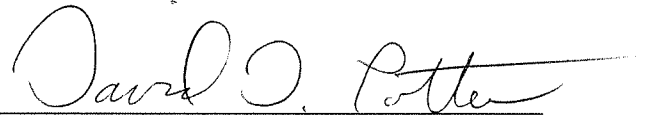
OAL File No. 2011-0830-03 E

This emergency action adds six categories of construction to the types of school facilities eligible for participation in the Seismic Mitigation Program (SMP) and provides for State Architect (DSA) review of engineering reports that must be included in an application for funding

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/8/2011 and will expire on 3/7/2012. The Certificate of Compliance for this action is due no later than 3/6/2012.

Date: 9/8/2011



David D. Potter
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: Lisa Silverman
Copy: Robert Young

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

EMERGENCY

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-0830-03E
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For use by Office of Administrative Law (OAL) only

2011 AUG 30 PM 12:19 OFFICE OF ADMINISTRATIVE LAW	
NOTICE	REGULATIONS

2011 SEP -8 PM 2:51

Debra Bowen
 DEBRA BOWEN
 SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY State Allocation Board	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Leroy F. Greene School Facility Act 1998; Seismic Mitigation Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND Regulation Sections 1859.2 and 1859.82.
TITLE(S) 2	REPEAL

3. TYPE OF FILING	<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		
	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		
	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____		
	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective 30th day after filing with Secretary of State Effective on filing with Secretary of State §100 Changes Without Regulatory Effect Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660) Fair Political Practices Commission State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON Robert Young	TELEPHONE NUMBER (916) 375-5939	FAX NUMBER (Optional) (916) 376-5332	E-MAIL ADDRESS (Optional) robert.young@dgs.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Lisa Silverman</i>	DATE August 30, 2011
TYPED NAME AND TITLE OF SIGNATORY Lisa Silverman, Acting Executive Officer, State Allocation Board	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 08 2011

Office of Administrative Law

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:

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"Most Vulnerable Category 2 Buildings," as defined by the DSA, means the building is located where the short period spectral acceleration is 1.68 g or more based on the 2002 United States Geological Survey National Seismic Hazard Maps adjusted for site class factors; the building is designed for occupancy by students and staff; the building type is either meets the criteria outlined in Section 1859.82(a)(1)(C) and is one of the following building types:

C1 – Concrete Moment Frame,

C1B – Reinforced Concrete Cantilever Columns with ~~Wood Roofs~~ Flexible Diaphragms,

C2A – Concrete Shear Wall with Flexible Diaphragms,

C3A – Concrete Frame with Infill Masonry Shear Walls and Flexible Diaphragms,

PC1 – Precast/Tilt-up Concrete Shear Wall with ~~Concrete Floor and Roof~~ Flexible Diaphragms,

PC1A – Precast/Tilt-up Concrete Shear Wall with ~~Flexible Roof~~ Rigid Diaphragms,

PC2A – Precast Concrete Frame without Concrete Shear Walls and with ~~Rigid Floor and Roof~~ Diaphragms,

PC2 – Precast Concrete Frame and Roofs with Concrete Shear Walls,

C3A – ~~Concrete Frame with Infill Masonry Shear Walls and Flexible Floor and Roof Diaphragms,~~ or

URM – Unreinforced Masonry Bearing Wall Buildings,

RM1 – Reinforced Masonry Bearing Wall with Flexible Diaphragms,

URMA – Unreinforced Masonry Bearing Wall with Rigid Diaphragms,

S1B – Steel Cantilever Columns with Flexible Diaphragm,

S3 – Steel Light Frame Metal Siding and/or Rod Bracing, or

M – Mixed construction containing at least one of the above structures types; and a structural report is provided by a structural engineer that demonstrates the lateral force-resisting system of the building does not meet collapse prevention performance objectives and the specific deficiencies and reasoning for concluding that the building has a potential for catastrophic collapse.

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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 Section 1771.5, Labor Code.

Section 1859.82. Facility Hardship.

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

- (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:
 - (1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding

for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is \$199.5 million for projects where the construction contract was executed on or after May 20, 2006, and the project funding provided shall be for the minimum work necessary to obtain DSA approval.

- (A) If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83 (e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.
- (B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.
- (C) The seismic mitigation projects must meet all of the following requirements:
 - 1. The construction contract was executed on or after May 20, 2006;
 - 2. The project funding provided shall be for the minimum work necessary to obtain DSA approval;
 - 3. The building is designed for occupancy by students and staff; and
 - 4. The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code, Part 2, Chapter 18, section 1803A and with the concurrence of the California Geological Survey.

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

- (D) Notwithstanding Sections 1859.93 and 1859.93.1, all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an Approved Application for funding.
- (E) If an Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the Seismic Mitigation Program authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.

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

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

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

Reference: Sections 17074.56, 17075.10, 17075.15 and 101012(a)(1), Education Code.