STATE OF CALIFORNIA *ARNOLD SCHWARZENEGGER*, Governor
STATE ALLOCATION BOARD
1130 K Street, Suite 400
Sacramento, CA 95814

IMPLEMENTATION COMMITTEE MINUTES

November 30 and December 1, 2006

Legislative Office Building
Sacramento, CA

Members Present

Mavonne Garrity, SAB
Chris DeLong, OPSC (Thursday only)
Kathy Hicks, OPSC (Friday only)
Fred Yeager, CDE
Chad Rohrs, DOF
Constantine Baranoff, SSD
Mark DeMan, LAUSD
Peggy Reyes, CASBO
William Savidge, CASH
Kenn Young, CCSESA
Kip Grubb, AIA
Richard Conrad, DSA (Thursday only)
Dennis Bellet, DSA (Friday only)
Cesar Diaz, SBCTC
Dennis Dunston, CEFPI
Debra Pearson, SSDA
Gary Gibbs, CBIA

The Chair announced that the Career Technical Education Facilities Program and Seismic Mitigation items were being moved to Friday, December 1, 2006, for discussion due to staff schedule conflicts. The Chair also indicated that Staff plans on presenting the implementing regulations for the items on the agenda at the January, 2007 State Allocation Board meeting.

2007 IMPLEMENTATION COMMITTEE MEETING CALENDAR

A request was made to consider holding meetings across the State as has been done in the past, and to change the following meeting dates:

- Friday, January 5th, to Thursday, January 4th
- Friday, April 6th, to Thursday, April 5th, and
- Friday, July 6th to Friday, July 13th

The Chair agreed to consider these suggestions.

OVERCROWDING RELIEF GRANT PROGRAM

This topic was introduced by the Chair and presented by the Office of Public School Construction (OPSC) staff members Melissa Ley and Regina Bills-Dacong.

OPSC staff reviewed the item discussed at the October 2006 meeting and presented updates to the proposed framework for implementing the Overcrowding Relief Grant (ORG) program. Staff and audience members discussed the merits and concerns of determining pupil eligibility on a districtwide basis versus site-specific basis, and the manner in which Class Size Reduction (CSR) portables would be reduced from eligibility. An audience member also suggested that the California Department of Education (CDE) consider processing these adjustments. It was agreed that the matter would be considered further.

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OVERCROWDING RELIEF GRANT PROGRAM (cont.)

Staff and audience members discussed the time required for districts to prepare applications, and time required for CDE and OPSC to process applications. It was suggested that the first application filing deadline not be until February or March 2008, and that the first allocation of funds be made at the July 2008 SAB meeting. Staff agreed to take the suggestions into consideration.

The requirement of districts to return to the State any savings that are realized at the conclusion of an ORG project was discussed. Audience members questioned this requirement, suggesting that if savings were returned to the State then the 60% commensurate requirement should not be required. Staff noted that savings could supplement leftover funds, as occurred with the Critically Overcrowded Schools (COS) program. Audience members were concerned that savings would not be realized in time to be apportioned under the ORG, therefore, Staff agreed to look into the issue further.

Concern was raised regarding what would happen in the event that a funding cycle is oversubscribed. Staff stated that ORG regulations will include provisions for oversubscribed funding cycles.

Staff and audience members discussed Financial Hardship under ORG, including how Financial Hardship review would be impacted by bridge financing and whether interest on loans for project design would be an eligible expenditure. Staff agreed to research the Financial Hardship questions that were brought forward.

The Chair ended the discussion by stating that a refined item for discussion along with proposed regulations would be presented at a future Committee meeting.

AB 607

The item was introduced by the Chair and presented by OPSC staff members Melissa Ley and Masha Lutsuk.

Staff briefly outlined the major changes to the Emergency Repair Program (ERP) and Interim Evaluation Instrument (IEI) as a result of Assembly Bill (AB) 607. As a continuation of the provisions of the Williams settlement, AB 607 adopts various changes to the Education Code (EC). These changes provide flexibility and encourage participation in the ERP as well as replace the IEI with a permanent school facility inspection and evaluation instrument.

The major changes to the ERP including the manner in which the list of eligible schools will be updated every three years based on the current API ranking and how the change in the list affects the ERP application filing periods were explained. In addition, the process for filing grant applications for projects not yet commenced or complete was also explained. Audience members were concerned about the ability to apply for funding for projects that may occur just before the application submittal deadline. Staff explained that the district may submit an estimated grant application for funding prior to work commencing; however, the law was clear that the list of eligible schools would be updated at the start of the 2007-2008 fiscal year.

Audience members were also concerned about the possibility of ineligible expenditures during audit. It was requested that the audit occur during OPSC's review of the final grant application. Staff explained that the intent was to expedite the release of funds to the Local Educational Agency (LEA) because the audit of certifications may be completed for the entire LEA rather than each specific project. Staff agreed to review the process further.

Staff outlined the recommended revisions to the ERP Regulations to be approved in conjunction with the new application for funding. The recommended revisions included new regulations as well as

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regulations to improve the existing program. Audience members had concerns with the following recommendations:

Architect/structural engineer fee amounts are capped at 12 percent.
Audience members disagreed with a fee cap because small projects require the same amount of work for Division of State Architect approvals as larger projects. As such, the percentage of fees is higher than a larger project. Staff explained the cap is the same as the Deferred Maintenance Program and Extreme Hardship Program. Staff explained that the fee cap was necessary due to problems with exorbitant fees in the existing program. Discussion continued with other options offered by the audience such as a percentage cap on all “soft costs” rather than a specific category and allowance of additional architect fees contingent on supporting documentation for the higher fees. Staff agreed to review the recommendations.

Projects must meet a minimum threshold dollar amount.
Staff explained that the recommended revisions include a threshold dollar amount for filing an application. The intent of the threshold is to maximize staff resources. Staff recommends a minimum threshold of $5,000 per application. There was an initial concern that smaller projects would not be funded if they were not combined with other emergency repairs. Staff assured that the regulations would include funding provisions for smaller projects when the threshold could not be met.

Administrative and consultant planning fees are ineligible.
Staff explained that the incorporation of administrative fees was clean-up language for expenditures already ineligible under the current program. Audience members disagreed with the consultant fees as ineligible. Discussion of consultant fees overlapped with the discussion of architect fees. Audience members felt that if a cap was required, then all “soft costs” could be included under a higher cap allowance and LEAs be allowed to decide how funds are allocated under the cap. Staff agreed to review the recommendations.

Replacement with a more costly alternate material/system allowable on a prorated basis.
Staff explained this was already under practice when same materials are unavailable or impractical, or the LEA chooses to pay the difference in cost when a similar material is available, and the purpose of the revision was for clarity. Staff stated that the regulations will have a provision that allows a better system to be used provided supporting documentation is provided.

Self insured and otherwise insurable assets and insurance deductibles are ineligible.
Audience members questioned why the deductible would not be covered if the repair cost would have been covered had the project not been insured. Staff explained that SAB legal counsel has opined that as part of due diligence, LEAs should hold insurance and have the ability to pay insurance deductibles. Staff agreed to re-review the legal opinion.

Additional costs must be within original project scope.
Staff explained that once an estimated grant is apportioned, only additional expenditures within the scope of the original cost estimate will be eligible for additional funding. Staff agreed that if additional work is found during the repair of work in the cost estimate, the expenditures would be eligible for additional funding. Staff explained that additional work not part of the original cost estimate may be eligible for funding on a new funding application.

Time Limit on Estimate Grant
Audience members expressed concerns with the one year time limit to submit a final grant request especially in regards to projects that required DSA approval. Audience members recommended that projects that require DSA approval be allowed 24 months to submit a final grant request. Staff agreed to review the recommendation.

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AB 607 (cont.)

Staff presented a draft of the revised IEI and a summary of the major additions to the existing IEI. Staff explained that at this time, only additions mentioned in law were added and that further study will be necessary to develop the permanent evaluation instrument.

A committee member expressed the dislike of double-negatives on the IEI. Staff explained that during the original approval process there was great debate on the wording of questions. The resultant IEI is designed for consistency so that a quick scan of the IEI would enable a reviewer to quickly catch identified problems. I.e. if all yes boxes were checked, no problems were found.

Representatives from the Green Schools Initiative, Department of Health Services and Community Action Fight Asthma addressed the committee to express the desire to assist staff with development of the permanent evaluation instrument. Representatives requested staff to strengthen the IEI by incorporating additional items for inspection. Representative also requested that the OPSC website include links to websites with environmentally preferable products. Committee members expressed concern that the items requested may be outside the scope of the intent of the ERP and IEI. There was also concern regarding additional training and administrative costs to LEAs to complete the IEI if the requests were implemented. Staff agreed to provide links to related websites and also agreed to consider a stakeholders group to provide input on the development of the permanent evaluation instrument.

Discussion ended with the statement that the draft regulations and Form SAB 61-03 would be presented at a future Implementation Committee meeting. The revised IEI would be presented at the next available SAB meeting for adoption.

CAREER TECHNICAL EDUCATION FACILITIES PROGRAM

This item was introduced by the Chair and presented by OPSC staff member Kelly Long and California Department of Education (CDE) representatives Pat Ainsworth, Ph. D. and Dennis Guido, Ph. D.

Staff briefly reviewed the inception of the Career Technical Education Facilities Program (CTEFP) by Assembly Bill 127 and recapped the prior discussions from the August 18 and October 6 Implementation Committee meetings.

The CDE staff discussed the revised Application Guidelines which outline the requirements and review process for an applicant's career technical Education (CTE) plan. These revisions followed two meetings with stakeholders that included the Chancellor's Office of the Community Colleges, the Labor and Workforce Development Agency, and business and industry groups. The Application Guidelines must be submitted, scored and approved by CDE prior to filing a funding application with OPSC. Discussion of the Guidelines focused on the scoring of the applications. The Committee and audience wanted the scoring process and criteria more fully explained.

The OPSC staff proposed that districts are eligible for CTEFP funding and may apply for new construction or modernization if they are operating a high school meeting the definition of a comprehensive high school pursuant to the Education Codes 51224, 51225.3, and 51228. A joint power authority (JPA) would have to be in existence as of May 20, 2006 and be organized expressly for CTE and meet the other requirements identified in law. The ability of a county office of education (COE) to apply for the program was discussed at length. Points of view were offered by the legislative proponent and COE representatives. Discussion also addressed whether a CTEFP project could be situated on an alternative education high school campus. Staff agreed to examine the issues further and consult with legal counsel.

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CAREER TECHNICAL EDUCATION FACILITIES PROGRAM (cont.)

Staff presented recommendations for CTE grant determinations and noted that additional capacity provided by a classroom constructed under the CTEFP would be charged against a district's new construction eligibility. The impact to an applicant's new construction eligibility was considered a disincentive by some attendees. It was suggested that all applications should be treated similar to the modernization portion, where eligibility is not affected by the CTEFP.

Staff's presentation touched on several other components of the CTEFP including: matching share requirements; the ability to apply for a loan from the State; reservation of funds for projects lacking all the necessary approvals; and design funding. Staff also presented recommendations for the funding priority and a proposed timeline for funding cycles. Finally, Staff recommended that savings not be retained on a CTEFP project and unused funds be returned and made available for subsequent projects.

The regulations for the CTEFP will be presented at a future Committee meeting.

SEISMIC MITIGATION

The topic was presented by Dennis Bellet from the Division of the State Architect (DSA).

AB 127 provides up to $199.5 million for seismic mitigation of the most vulnerable school facilities that are a Category 2 building that pose an unacceptable risk of injury to its occupants in the event of a seismic occurrence. The DSA presented a report on the recommendations for determining which buildings represent the most vulnerable Category 2 buildings. The report recommended the following methodology for determining the most vulnerable Category 2 buildings:

- The building has to be one of the following: C-1, concrete moment frame; PC1A, precast/tilt-up concrete shear wall with flexible roof; PC2, precast concrete frame and roofs with concrete shear walls; or URM, unreinforced masonry bearing wall buildings

- The building is situated where the ground shaking intensity exceeds a very high threshold.

- The building must be designed for occupancy by students and teachers

- A structural engineer must provide a report acceptable to the DSA that indicates that the building does not meet collapse prevention performance objectives and the specific deficiencies and reasoning why the building has a high potential for catastrophic collapse.

Due to time constraints, a discussion on this topic did not occur, and the report was presented with brief comments by members and the audience. Comments were requested to be forwarded to the Office of Public School Construction before the next Implementation Committee meeting on February 2, 2006. Any comments received will be addressed at that meeting.

It was noted by a committee member that it sounds like the money is driving the threshold.

It was clarified that the 7,500 buildings that are listed as Category 2 buildings in the Assembly Bill (AB) 300 report are not the only buildings that would qualify for seismic funding, and that there are buildings that could meet the criteria that were not part of the AB 300 report.

Staff clarified that the funding process for seismic will be similar to that of the Facility Hardship Program. It was also stated by the DSA that it has not been decided yet if the reviews of the structural reports will go through the district's regional DSA offices or through one office.

Concern was noted that eligible classrooms could potentially be closed, but due to limited funds, do not receive funding.

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ADJOURNMENT AND NEXT MEETING

The meeting adjourned at 3:30 p.m. The next Implementation Committee meeting is scheduled for Friday, January 5, 2006 at 9:30 a.m. and will be held at the Legislative Office Building, 1020 N Street, Room 100, Sacramento, California.