STATE OF CALIFORNIA *ARNOLD SCHWARZENEGGER*, Governor

STATE ALLOCATION BOARD
1130 K Street, Suite 400
Sacramento, CA 95814

IMPLEMENTATION COMMITTEE MINUTES

March 7, 2008

Legislative Office Building
Sacramento, CA

Members Present
Mavonne Garrity, SAB
Lori Morgan, SAB/OPSC
Fred Yeager, CDE
Lenin Del Castillo, DOF
Gary Gibbs, CBIA
William Savidge, CASH
Dennis Dunston, CEFPI
Mamie Starr (Alternate for Kenn Young, CCSESA)
Shawn Atlow/Lyle Smoot, LAUSD
Margie Brown/Lettie Boggs (CASBO)
Dean Tatsuno, AIA
Robert Pierce (SSD)
Cesar Diaz, SBCTC

Members Absent
Kathy Hicks, DSA
Debra Pearson, SSDA

The meeting was called to order at 9:40 am.

January 4, 2008 Minutes

The January 2008 minutes were held open for future consideration. Committee and audience members made comments that the minutes did not reflect the concerns raised at the meeting. A discussion ensued regarding the level of detail that should be included in the minutes, and the minutes were held open subject to modifications.

Use of Site Sale Proceeds

Ms. Suzanne Reese of the Office of Public School Construction (OPSC) presented this item to discuss topics that arose at the March 2007 State Allocation Board (SAB) meeting regarding the use of site sale proceeds towards insolvent health and/or retirement programs on a single and one-time only basis.

To clarify questions regarding the definition of “insolvency”, the California Department of Education (CDE) representative and the OPSC agreed to work together to define the term for CDE’s California School Accounting Manual.

Some committee and audience members expressed concerns that these one-time payments will become ongoing and opposed the change in regulation to allow the payments. One

member shared ‘major concerns’ of the implied risks of mixing capital funding with operational funding.

A question was raised regarding whether site sale proceeds from several parcels could be combined toward a lump-sum one-time payment. OPSC stated that a lump-sum payment is acceptable under current law and proposed regulations; however, splitting these site sales and making several separate payments toward an insolvent health or retirement program would need consideration by the SAB’s legal counsel. In either case, a district must receive approval from the SAB for these payments. It was reiterated that only one-time payments are acceptable under the current law.

Two audience members inquired about the SAB’s intent; the question was whether the SAB meant to allow payments solely for retirees’ insolvent health benefits, and not employee-wide insolvent health benefits, as they relate to Governmental Accounting Standards Board (GASB) 45. Comments were shared from a representative from the legislation’s author that the proposed regulatory amendment was in response to GASB 45. The intent was not to encourage any type of ongoing payments, but rather to help districts out of fiscal crisis.

The OPSC indicated it would confer with author of the legislation, and after that discussion will consider whether to bring the item back for future discussion.

Material Inaccuracy Penalties

Mr. Rick Asbell, of the OPSC, presented this item to discuss the Material Inaccuracy Penalties item presented at the February 27, 2008 SAB meeting. Three scenarios were presented to the Implementation Committee, which outlined how the interest penalty associated with a Material Inaccuracy, in the form of a premature or invalid fund release certification, was calculated for each example.

A question was raised regarding methodology in rescinding new construction projects. So far, the OPSC has not discovered a Material Inaccuracy for a new construction project. Another committee member stated that legal counsel would have to be consulted on this issue.

A concern was raised by a committee member that SFP Regulation Section 1859.2 goes beyond the Education Code (EC) Section 17070.51. The EC defines material inaccuracy as any certified eligibility or funding application related information found to have been falsely certified. However, the SFP Regulations provide further clarification and define a Material Inaccuracy only if a funding advantage has been obtained by the district. An opinion was expressed that either the EC has to be revised to reflect the SFP Regulation or material inaccuracy should reflect what is defined in the EC. Another committee member stated that if a material inaccuracy finding was not limited to a situation in which the district obtained a funding advantage, any eligibility or funding application related information which was inaccurate would result in a material inaccuracy. This would prohibit the district from correcting simple mistakes and misstatements that have no benefit to the district.

Concerns were raised regarding the different end points for Scenarios 2 and 3. A comment was made that the two end points should be the same. A committee member stated that there are legal issues in treating Scenario 2 and 3 the same because Scenario 3 represents a project which is invalid.

An audience member expressed the opinion that in Scenario 3 the end date for the period of funding advantage is not concrete and the interest penalty could substantially exceed the actual grant amount in certain cases. A committee member stated that the OPSC has not come across a project in which the interest penalty exceeded the grant. Another audience member stated that the end date is a moving target. However, this audience member stated that the funding advantage period may not be long enough to make the bond funds whole. A committee member stated that the purpose of the 18 month time limit on fund release was to ensure that funds are released to the district in a timely manner.

An audience member stated that EC 17070.51 fails to establish a time frame and definition for funding advantage. This member questioned whether funding advantage referred to the State losing interest on the funds or the district gaining interest on funds. According to this audience member, if the purpose is to make bond funds whole, then Scenario 1 should be treated as a funding advantage. Also the member stated that, in Scenario 3, interest should be collected until the apportionment is returned to the State.

Scenario 3 provides the district with an opportunity to re-file a new application since the project was a modernization project. However, the new apportionment is limited to the original amount of the project which was rescinded. A committee member stated that since the district is required to pay the interest penalty back then the district should be eligible for funding at a new per pupil grant at the time of re-filing. However, it was pointed out by staff that the contracts would have been entered into years prior and receiving construction cost indexes would not be appropriate as that would provide further funding advantage as a result of a district's false/inaccurate certification.

An audience member stated that since 2004, the districts are required to submit contracts along with the *Fund Release Authorization* form. So, most projects which are now facing a finding of Material Inaccuracy were funded prior to 2004. Staff pointed out that that only approximately one percent of 3,600 projects that have been audited to date have had a material inaccuracy finding by the SAB.

Due to the time constraints, and the need for further discussion, it was agreed that this item will need to be discussed further at the next meeting.

Material Inaccuracy Regulations

Mr. Rick Asbell of the OPSC presented the topic, which relates to providing districts protections from Material Inaccuracy findings that are based solely on information provided on the new *Project Information Worksheet*.

Some audience and committee members agreed that removing the terms "in good faith" and "in and of itself" would produce a regulatory amendment that they would agree to. An audience member also questioned how 'good faith' would be determined. The OPSC Staff stated that it wants accurate information, which is the reason for including 'good faith' in the revised regulation. Including 'in and of itself' was intended to isolate the *Project Information Worksheet* from other funding and eligibility documents that do not qualify for this exception.

A question raised by a member of the audience was whether current or future districts with Material Inaccuracy for other purposes would be charged for the review of the worksheet, as they are for other applications pursuant to School Facility Program Regulation Section 1859.104.3. The OPSC stated that those districts would not be charged for this purpose.

Another member from the audience noted that the *Project Information Worksheet* may not be considered "funding or eligibility application related information", and thusly, for purposes of Education Code Section 17070.51, would not fall under the umbrella of Material Inaccuracy law.

The OPSC also stated that another protection is already provided for the districts in reporting information on the *Project Information Worksheet*. The form instructs districts to, "Provide actual amounts when available and estimates as necessary". So, since some of the items reported on the worksheet will be estimates, concerns that the district may be reporting an inaccurately should be eased somewhat. Finally, Staff noted that the item may return for further consideration at the next Implementation Committee.

Introduction to AB 1014 (Bass)

Mr. Juan Mireles and Ms. Masha Lutsuk from the OPSC presented this topic to provide an overview of the current enrollment projection calculation and to review the basic principles of the cohort survival projection method in order to understand changes proposed by Assembly Bill (AB) 1014 and how these changes can be implemented. Staff then presented an analysis of 116 projections prepared using the existing method compiled from eligibility documents submitted by school districts and approved by the State Allocation Board over three time periods to illustrate how the actual enrollment compared to the enrollment projection for the same time period. The Committee members pointed out that the analysis cannot be used to make generalizations about all districts in the State as it only included data submitted by school districts to the SAB during a given period of time. Staff acknowledged that certain anomalies in school districts' enrollments were not represented in the analysis and future research may be needed to address this issue.

Committee members suggested that staff should analyze what is wrong with the cohort survival method, rather than how it is currently working. Another concern brought up by committee members was how the current housing recession may have affected the projected enrollment, and, thus, the accuracy of the cohort survival projection method, especially in cases where the projections can be augmented with future residential unit counts. Committee members suggested looking for a way for school districts to be able to present their facility needs to the SAB and the Department of Finance (DOF) on a case by case basis for review so as to be able to select individual enrollment projection methods best suited for their needs. It was also stated that smaller school districts would benefit from pre-established methods.

Staff informed the committee that OPSC intends to present further information on proposed implementation steps for AB 1014 with the goal to finalize implementation of this bill in summer of 2008. Staff also acknowledged that they will be working in conjunction with the DOF, Demographics Research Unit and that those members will be requested to be at future Implementation Committee meetings to discuss proposed changes to the cohort survival projection method.

Adjournment and Next Meeting

The meeting adjourned at 3:35 p.m. The next committee meeting is scheduled for Friday, April 4, 2008 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.