

STATE ALLOCATION BOARD

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Date: January 21, 2010

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on *Thursday, February 4, 2010* from 9:00 a.m. to 4:00 p.m. in the California State Capitol, Room 444, Sacramento, California.

The Implementation Committee's proposed agenda is as follows:

- 1) Convene Meeting
- 2) SB 592
Discuss regulatory changes for the implementation of Chapter 192, Statutes of 2009, (SB 592 Romero).
- 3) Change of Scope for School Facility Program Projects
Continue discussions on the process for a change of project scope in a SFP project.
- 4) Implementation Committee – Rules and Operating Procedures
Discuss proposed procedures for the Implementation Committee.
- 5) Career Technical Education Facilities Program Changes
Continue discussions on proposed regulatory changes for Career Technical Education Facilities Program Changes.
- 6) *Expenditure Report, Form SAB 50-06,*
Discuss clarifications to the Form SAB 50-06 to clarify the instructions regarding interest reporting.

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Sue Genera at (916) 445-4320.

A handwritten signature in black ink, appearing to read "Lisa Kaplan".

LISA KAPLAN, Chairperson
State Allocation Board Implementation Committee

Individuals who need auxiliary aids for effective participation are invited to make their requests and preferences known to Sue Genera at (916) 445-4320 five days prior to the meeting.

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING
February 4, 2010

SENATE BILL 592: Title to Charter School Facility Program (CSFP) Project Facilities

PURPOSE OF REPORT

To discuss the implementation of Senate Bill (SB) 592 which allows local governmental entities and charter schools to hold title to charter school projects receiving funds under the Charter School Facilities Program (CSFP).

BACKGROUND

In 2002, Assembly Bill (AB) 14 created the CSFP. Through the passage of Propositions 47, 55, and 1D, \$900 million has been made available for the construction of new charter school facilities or the rehabilitation of existing school district facilities for charter school use. Prior to the passage of SB 592, the school district where a CSFP project was physically located was required to hold title to the project facilities.

SB 592, which was chaptered on October 11, 2009 as an urgency statute, expands authorization for who may hold title to CSFP facilities to include local governmental entities and charter schools. In addition, for charter schools that have entered into the Charter School Agreements prior to January 1, 2010, the bill authorizes the school district to transfer title at the charter school's request if the district and charter school mutually agree to the terms and conditions of the transfer.

AUTHORITY

Article 12, Sections 17078.52 through 17078.66 of the Education Code (EC) establish and govern the CSFP within the SFP.

Senate Bill 592 makes changes to EC Section 17078.62 and adds EC Section 17078.63 which will require changes to the SFP.

EC 17070.35 directs the Board to establish procedures and policies necessary for the administration of the SFP.

DISCUSSION

The scope of Senate Bill 592 calls for a number of modifications to the School Facility Program regulations.

Regulation Section 1859.172

Title to Project Facilities

In order to implement this law, Regulation Section 1859.172 will be added to the current School Facility Program Regulations. This regulation section is intended to detail the three entities that can hold title to charter school project facilities and the documentation and steps required for each allowable option. Below is a summary.

School District – The OPSC will follow current practice for projects in which the school district holds title to the project facilities. In order to request a fund release, the charter school must either submit documentary evidence that the school district holds title to the project facilities or have entered into the Charter School Agreements which outline the process by which the district will take or receive title.

Local Governmental Entity – The charter school must submit either documentary evidence that a local governmental entity holds title to the project facilities or have entered into the Charter School Agreements which outline the process by which the local governmental entity will take or receive title. Three additional conditions must be met for a local governmental entity to hold title.

1. The local governmental entity may not exercise any control over the operation of the school.
2. The chain of title must include a restrictive covenant stating that the facility shall only be used for public school purposes.
3. The chain of title must include a remainder interest to the school district in which the charter school is physically located or if the remainder interest is disclaimed by the school district, to the Board.
 - The remainder interest will be triggered when the project facilities are no longer used for charter school purposes by the original charter school.
 - If the remainder interest is triggered, the school district has the right to disclaim the remainder interest on the property after the priorities set forth in Education Code Section 17078.62(b)(2) through 17078.62(b)(4) have been satisfied. If the remainder interest to the project facilities is disclaimed by the school district, only then shall the remainder interest to the property be transferred to the Board for disposal of the project facilities.
 - To disclaim the remainder interest the governing board of the school district must take an action and provide written notice of rejection to the Board.

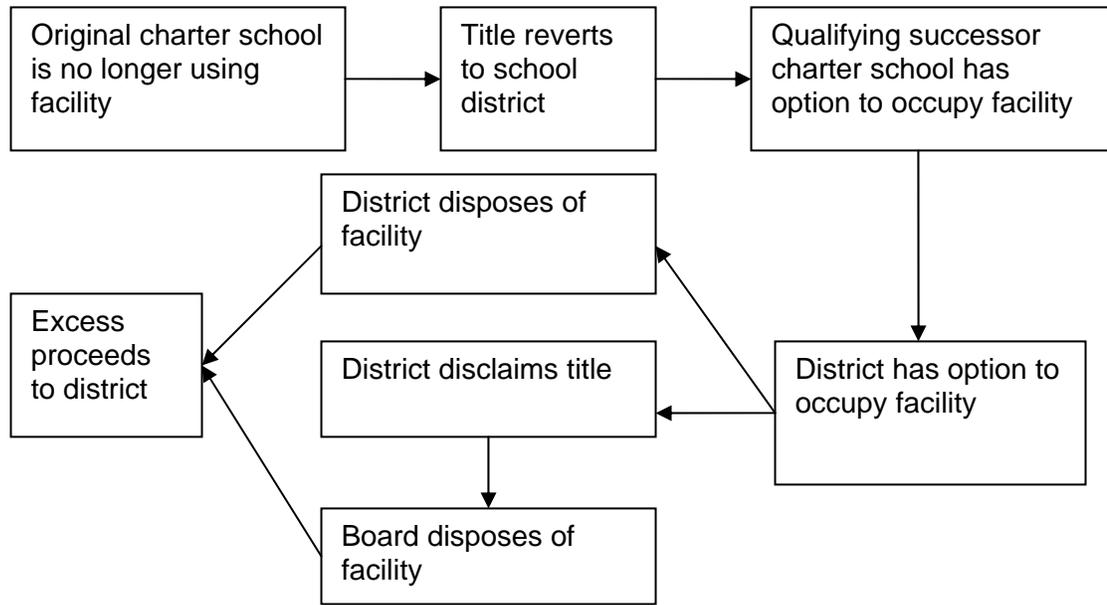
The conditions detailed above will also be included in the Charter School Agreements.

Charter School – The charter school may hold title to the project facilities if the following documentation is submitted and conditions are met:

1. The charter school must submit a written request to the OPSC to hold title to the project facilities.
2. Within the written request to hold title, the charter school must justify why title is not held by the school district and why title is not held by a local governmental entity.
3. The chain of title must include a restrictive covenant stating that the facility shall only be used for public school purposes.
4. The chain of title must include a remainder interest to the school district in which the charter school is physically located or if the remainder interest is disclaimed by the school district, to the Board.
 - The remainder interest will be triggered when the project facilities are no longer used for charter school purposes by the original charter school.
 - If the remainder interest is triggered, the school district has the right to disclaim the remainder interest on the property after the priorities set forth in Education Code Section 17078.62(b)(2) through 17078.62(b)(4) have been satisfied. If the remainder interest to the project facilities is disclaimed by the school district, only then shall the remainder interest to the property be transferred to the Board for disposal of the project facilities.
 - To disclaim the remainder interest the governing board of the school district must take an action and provide written notice of rejection to the Board.
5. A lien in favor of the Board must be recorded for the State matching share and any State loan allocated. The Board will not place a lien on any cash contribution to the project provided by the charter school which is used to make up all or part of the local matching share.

The conditions detailed above will also be included in the Charter School Agreements. The Board shall make a finding that the charter school meets all of the requirements necessary to hold title to the project facilities.

Facility Use Priority When Local Governmental Entity or Charter School Holds Title



Title Transfer

Regulation Section 1859.172 provides language allowing a charter school to request that a school district transfer title of the project facilities to a local governmental entity or to the charter school itself. The charter school may make a request if the school district and charter school entered into the Charter School Agreements prior to January 1, 2010. In order for title to transfer, the school district and charter school must mutually agree to the terms of transfer. The charter school must notify the OPSC in writing that a title transfer request is being made and that all of the necessary conditions for holding title pursuant to Education Code Section 17078.62 and 17078.63 apply.

2. Regulation Section 1859.171 and 1859.162.3– Regulation clarification

Regulation Section 1859.171 is being updated to address three issues. The OPSC is updating this regulation section to clean-up the current regulations and to further clarify the effects of SB 592 on the current regulations. The first change to the regulation section is to address charter schools that have had their charter petition revoked or their renewal request denied. The second update is to highlight the fact that successor charter schools have the first option to take over the project facilities. The previous two issues were in place prior to SB 592 and are being inserted to clarify the existing procedures. The third update to the regulation section is to address the disposition of the project facilities in the event that the district does not hold title to the project. This addition is in direct correlation to the changes required by SB 592.

Specific references to a district holding title and signing the Charter School Agreements are being removed from Regulation Section 1859.162.3 because the issues are no longer applicable in all instances.

3. Charter School Agreements

The Charter School Agreements will be modified to reflect the changes in the law and the regulations. When title is held by the Charter School there will no longer be a Use Agreement. Changes to the Agreement templates are underway and must be approved by both the California School Finance Authority and the State Allocation Board.

ATTACHMENT A

Section 1859.171. Use of Facility.

If a Charter School that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 on a Preliminary Charter School Apportionment, or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, and the review process outlined in Education Code Section 17078.62(b)(1) has been completed (if applicable), then the following events shall occur: the school district where the Charter School is physically located can either:

(a) Any qualifying successor charter school shall be permitted to occupy the facility pursuant to Education Code Section 17078.62(b)(2).

~~(a)~~ (b) If no qualifying successor charter school chooses to occupy the facility, the school district may elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:

(1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,

(2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).

~~(b)~~ (c) If the school district chooses not to take possession of the facility it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

(d) Pursuant to Education Code Section 17078.62(b)(5)(B), if the school district declines to dispose of the facility it shall provide written notice of its rejection to the Board in the form of written action taken by the governing board of the school district and the Board shall dispose of the property.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.
Reference: Section 17078.62, Education Code.

Section 1859.172 Title to Project Facilities

(a) Prior to the release of funds for site acquisition or new construction Final Charter School Apportionments, a charter school that has received a Preliminary Charter School Apportionment must provide one of the following:

- (1) Documentary evidence that the school district in which the project is physically located holds title to the project facilities.
- (2) Documentary evidence that a local governmental entity holds title pursuant to all of the requirements set forth in Education Code Section 17078.63(a)(2), or
- (3) A written request that the charter school be authorized to hold fee simple title to the subject property signed by an authorized charter school representative pursuant to all of requirements set forth in Education Code Section 17078.63(a)(3). The written request must include a statement justifying the reasons why ownership will not be vested with an entity described in (a)(1) and why ownership will not be vested with an entity described in (a)(2).

(b) A charter school may request that a school district transfer title to project facilities to a local governmental entity or the charter school itself if prior to January 1, 2010 the school district entered into an agreement to hold title to the project facilities. The transfer of title shall only take place if the school district and charter school mutually agree to a title transfer. Prior to the transfer of title, the charter school must notify the OPSC in writing that a title transfer request is being made, enter into new Charter School

Agreements with the State and a local governmental entity if applicable, and demonstrate that all of the necessary conditions for holding title pursuant to Education Code Section 17078.63 will be complied with. For purposes of title transfer pursuant to Education Code Section 17078.63(b)(1) the charter school shall not be required to provide the written request outlined in section (a)(3) above.

Note: Authority cited: Section 17078.63, Education Code.

Section 1859.162.3. Overlapping District Boundaries.

If the Charter School provides or will provide instruction for a combination of grade levels and therefore is or will be located in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Form SAB 50-09 indicating the number of unhoused pupils served from each district, as appropriate will be required. Sections 1859.162.1 and 1859.162.2 shall apply to all districts involved in the Preliminary Charter School Apportionment. For the purposes of receiving a Preliminary Charter School Apportionment pursuant to Section 1859.163, the applications will be combined into one to be funded concurrently.

In addition, if the project will be located in an area of overlapping district boundaries but proposes to house only the grade levels served by just one of the districts, the district that serves the same grade levels will be subject to the district related requirements of this article ~~(including, but not limited to holding title to the project, generating overcrowding percentages for preference points and signing the Charter School Agreements).~~

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.
Reference: Sections 17078.53 and 17078.54, Education Code.

Senate Bill No. 592

CHAPTER 192

An act to amend Sections 17078.57 and 17078.62 of, and to add Section 17078.63 to, the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 592, Romero. Charter Schools Facilities Program.

Existing law establishes the Charter Schools Facilities Program to provide funding to qualifying entities for the purpose of establishing school facilities for charter school pupils. Existing law requires the California School Finance Authority, in consultation with the State Allocation Board, to adopt regulations establishing uniform terms and conditions that would apply equally to funding for charter school facilities projects, including security provisions that include the requirement that title to project facilities be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system.

This bill, in addition, would authorize a local governmental entity, as specified, or a charter school to hold title to charter school project facilities. The bill would require applicants, prior to the release of funds for site acquisition or new construction final apportionments, to provide documentary evidence that the school district in which the facility is to be physically located, a local governmental entity, as specified, or the charter school holds title to the project facilities, subject to specified conditions. The bill would authorize a charter school to request a school district to transfer title to project facilities to an entity authorized by the bill, as specified, if the district entered into an agreement, prior to January 1, 2010, to hold title to the project facilities. The bill would authorize a school district that receives such a request to transfer the title to the entity designated in the request pursuant to terms and conditions mutually agreed upon by the district and the charter school. The bill also would make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17078.57 of the Education Code is amended to read:

17078.57. (a) The authority, in consultation with the board, shall adopt regulations establishing uniform terms and conditions that shall apply equally to all projects for funding in accordance with Section 17078.58, including, but not limited to, all of the following:

(1) The process for determining the manner in which the applicant will pay its local matching share, including the method for determining lease payments to be made in lieu of the local matching share. The regulations shall comply with all of the following criteria:

(A) The payment process set forth in Section 17199.4 may be used.

(B) The payment process shall permit lump-sum local matching payments and shall permit establishment of a schedule for lease payments to be made in lieu of the local matching share.

(C) The lease payment schedule shall be calculated by amortizing one-half of the total approved project costs, minus lump-sum payments, over the entire payment period as set forth in Section 17078.58.

(D) The payment schedule for payments in lieu of the local matching funds pursuant to this section shall be based upon payment, within a reasonable period of time not to exceed a 30-year period, of one-half of the total eligible project costs, and shall be calculated in a manner that is designed to result in full payment of that portion, together with interest thereon at a rate set by the authority. The interest rate shall be set using the lower of the following:

(i) The rate paid on moneys in the Pooled Money Investment Account as of the date of disbursement of the funding.

(ii) A rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, and the interest rate shall be computed according to the true interest cost method.

(E) Notwithstanding subparagraph (D), the authority shall not set the interest rate on a loan at a rate lower than 2 percent. Program participants that have locked in an interest rate before January 1, 2009, may reset their payment schedule based on the interest rate set pursuant to subparagraph (D) as of January 1, 2009. Program participants executing an agreement on and after January 1, 2009, shall have their interest rate set at the time the funding agreement is executed and shall not renegotiate interest rates without prior approval of the authority.

(2) The method for determining whether a charter school is financially sound. In the case of a charter school chartered by a school district that is located outside of the school district that chartered it, the method developed by the authority shall include, but shall not be limited to, a site visit to the school facility currently being used by the charter school during hours when pupils are present and instruction is being provided.

(3) (A) Security provisions, including, but not limited to, whether title to project facilities shall be held by the school district in which the facility is to be physically located, in trust, for the benefit of the state public school system, or by another entity as authorized pursuant to Section 17078.63.

(B) The authority shall adopt a mechanism whereby a person or entity who provides a substantial contribution that is applied to the costs of the

project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of as set forth in paragraph (5) of subdivision (b) of Section 17078.62.

(4) The method for integrating funding pursuant to this article with the general procedures of the authority pursuant to subdivision (i) of Section 17180 for otherwise funding projects eligible for funding under this chapter, if appropriate.

(b) The authority may adopt, amend, or repeal rules and regulations pursuant to this chapter as emergency regulations. The adoption, amendment, or repeal of these regulations is conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code.

SEC. 2. Section 17078.62 of the Education Code is amended to read:

17078.62. (a) As a first priority, the existing charter school shall be permitted to continue to use the facility until it is no longer needed by the charter school for charter school purposes.

(b) If the charter school occupying a facility funded pursuant to this article ceases to utilize the facility for a charter school purpose, all of the following apply:

(1) If the charter school is no longer using the facility because the school district in which the charter school is located has revoked or declined to renew the charter, the school district, as a necessary component of the first priority established in subdivision (a), may not immediately occupy the facility, but shall allow a reasonable time, not to exceed six months, for completion of the review process contemplated in Section 47607 or 47607.5.

(2) As a second priority, any qualifying successor charter school shall be permitted to meet its facility needs by occupying the facility on equal terms as the prior charter school occupant, including, but not limited to, assumption of fee simple title to the facility, as described in paragraph (3) of subdivision (a) of Section 17078.63.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession and take title to the facility, if the title is not already held by the district, and make the facility available for continued use as a public school facility.

(4) If the school district in which the charter school is physically located elects to take possession of a facility pursuant to paragraph (3), it shall pay the balance of the unpaid local matching share or demonstrate that it is willing and able to continue to make the lease payments in lieu of the local matching share on the same terms. However, the payments shall be reduced or eliminated, as appropriate, if the school district complies with all of the following:

(A) It demonstrates that it would have been eligible for hardship funding under Article 8 (commencing with Section 17075.10) at the time that the application for funding the facility under this article was originally submitted.

(B) It certifies to the board that it will utilize the facilities for public school purposes for a period of at least five years from the date that it occupies the facility.

(5) (A) If the school district declines to take possession pursuant to paragraph (3), or if the facility is subsequently no longer needed for public school purposes, the school district shall dispose of the facilities in a manner otherwise applicable to the disposal of surplus public schoolsites. Any unpaid local matching share shall be paid from the net proceeds, if any, of the disposition and shall be deposited into the respective 2002, 2004, or 2006 Charter School Facilities Account. To the extent that funds remain from the proceeds of the disposition after repayment of the local matching share, any security interest granted to a person or entity pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 17078.57 shall be satisfied. Funds remaining from the proceeds after any security interest has been satisfied shall be paid to the school district in which the facility is located to be used for capital improvements in the school district.

(B) If title to the facility is held by a charter school or a local governmental entity other than the school district, and the school district declines to dispose of the facility, the board shall dispose of the facility in accordance with the provisions that would otherwise apply to the disposal of surplus school property by the school district, including, but not limited to, Chapter 4 (commencing with Section 17385) of Part 10.5. The proceeds of the disposition shall be distributed in accordance with subparagraph (A).

(6) If the lease payments in lieu of the local matching share are fully paid, the school district shall continue to hold title to the facility, in trust, for the benefit of the state public school system. The school district shall permit continued use of the facility for charter school purposes as long as the facility is needed for those purposes.

SEC. 3. Section 17078.63 is added to the Education Code, to read:

17078.63. (a) Prior to the release of funds for an application submitted pursuant to paragraph (2) of subdivision (b) of Section 17078.53 for site acquisition or new construction final apportionments, applicants shall provide one of the following:

(1) Documentary evidence that the school district in which the facility is to be physically located holds title to the project facilities in trust for the benefit of the state public school system.

(2) Documentary evidence that a local governmental entity, including, but not limited to, a county board of education, a city, a county, or a city and county, holds title to the project facilities in trust for the benefit of the state public school system, subject to both of the following conditions:

(A) Consistent with the prohibition in Section 6 of Article IX of the California Constitution regarding governance of public schools, a city, county, city and county, or other local governmental entity not included within the public school system that holds title pursuant to this paragraph shall not exercise any control over the operation of the charter school.

(B) The following shall be recorded in the chain of title for the property:

(i) A restrictive covenant specifying that the facility shall be used only for public school purposes as authorized in the California Constitution and statute.

(ii) A remainder interest to the school district in which the facility is physically located or, if the school district disclaims the interest to the facility, to the board. The remainder interest shall be triggered when the facility is no longer needed for charter school purposes and shall then be subject to paragraphs (2) to (6), inclusive, of subdivision (b) of Section 17078.62.

(3) (A) A request that the charter school be authorized to hold fee simple title to the subject property in trust for the benefit of the state public school system, on which a lien shall be recorded in favor of the board for the total amount of funds allocated pursuant to this article, including any loan received in lieu of a local matching share pursuant to Section 17078.57. The charter school shall include with the request a statement outlining the reasons why ownership of the project facilities is not vested with an entity set forth in paragraph (1) or (2). Prior to releasing any project funds, the board shall make findings that the applicant has submitted all of the information required by this paragraph.

(B) The following shall be recorded in the chain of title for the property:

(i) A restrictive covenant specifying that the facility shall be used only for public school purposes as authorized in the California Constitution and statute.

(ii) A remainder interest to the school district in which the facility is physically located or, if the school district disclaims the interest to the facility, to the board. The remainder interest shall be triggered when the facility is no longer needed for charter school purposes and shall then be subject to paragraphs (2) to (6), inclusive, of subdivision (b) of Section 17078.62.

(b) A charter school may request a school district to transfer title to project facilities to an entity authorized by paragraph (2) or (3) of subdivision (a) if the school district entered into an agreement, prior to January 1, 2010, to hold title to those facilities. A school district that receives a request pursuant to this subdivision may transfer the title to the entity designated in the request pursuant to terms and conditions mutually agreed upon by the district and the charter school.

(c) The board may adopt regulations to implement this section.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expedite the construction of charter school facilities by facilitating the allocation of state general obligation bond proceeds authorized by the voters to be used for purposes of the Charter Schools Facilities

Program at the earliest possible time, it is necessary that this act take effect immediately.

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STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING
February 4, 2010

CHANGE OF SCOPE GUIDELINES

PURPOSE OF REPORT

To clarify guidelines for school districts to refer to when navigating the change of scope process without it resulting in a Material Inaccuracy.

BACKGROUND

At the September 23, 2009 State Allocation Board (SAB) meeting, Board members asked how a district can proceed with a change of scope and how it can be handled without resulting in an MI.

In 2005, the Office of Public School Construction (OPSC) published an article in the Advisory Actions newsletter about how to proceed with change of scope requests. The article discusses what steps a district should take if a change of scope exists for a SFP modernization or new construction project. This item discusses the process outlined in the article, specific examples of material scope changes, identifies the existing process for receiving SAB approval of scope change requests , and provides comments to the questions raised at the December 4th 2009 Implementation Committee meeting.

AUTHORITY

See Attachment.

DISCUSSION

In previous discussion at the Implementation Committee the OPSC identified several issues related to the change of scope in new construction projects at different stages in project funding and construction. The chief concern for material a change in the project is the assumption that the project will be constructed as designed and approved by the Division of the State Architect (DSA), the California Department of Education (CDE) and the SAB. However, the reality of the construction environment is such that every project design undergoes a variety of changes during construction. These changes may alter the DSA and CDE plan approvals that were used to make the funding approval by the SAB. Furthermore, SAB funding approval contains assumptions and conditions regarding the number of classrooms, the type of construction, certain elements of site development work and site layout. A deviation from those conditions renders the approval invalid.

The receipt of State funds by a school district imposes a number of responsibilities on the recipient to ensure that the district complies with all conditions and assumptions on which funding approval was made. This includes the final design of the project and construction plans that were used to determine the eligibility for apportionment. A change in plans creates a responsibility for the district to seek assurance that the project continues to meet the conditions of SAB apportionment. The OPSC can assist the district and facilitate a process by which the SAB approval is adjusted to reflect project changes.

Questions from the December Implementation Committee Meeting

What is the definition of a scope change?

A scope change is a *material* change in the complete set of plans and specifications that have been approved by the DSA/CDE, and approved to be funded by the SAB. Scope changes are significant material changes to the plans which may render original SAB approval of funding for the project invalid.

While Staff previously identified many examples of possible scope changes, it is difficult to list every possible scenario that could exist. In any case, it is important to notify OPSC so staff can help the district determine whether the change is substantial or material enough to need an SAB approval.

What makes a scope change material?

A material scope change is any change that would alter the funding formula, resulting in a different grant amount from what was previously approved by the SAB.

Below are examples of changes that are likely to be considered material in any project receiving new construction grants:

- Addition/Deletion of Classrooms
- Addition/Deletion of Minimum Essential Facilities (MEF) Area
- Addition/Deletion of Non-Classroom Non-MEF Area
- Permanent to Modular Construction, or vice versa
- Changing the Placement of a Building
- Site Re-configuration
- Any other *material* changes which affect funding (An example would be changing multi-story buildings to single story)

How does a district successfully navigate the scope change process?

If a district has an upcoming change of scope to a project, the OPSC recommends that the change should be brought to the OPSC's attention as early as possible. This will help the district successfully complete the scope change process, if necessary, and assure project compliance with SFP law and regulations. Below are some general guidelines a district should follow if a project already received an apportionment:

- **The district should notify the OPSC.**
- **OPSC will review the changes, discuss potential impacts on the project approvals/ funding (if any), and discuss the next steps with the district.**
- **The district should obtain DSA/CDE approval of scope change(s), if necessary.**
- **OPSC will submit an item to the SAB for approval of the scope change (and funding adjustment, if necessary).**

How long will it take the OPSC to review a scope change?

Although it depends on the complexity of the scope change, districts can expect the OPSC to complete its review within four weeks after notification of the scope change. This process can be completed during the time that the district is waiting for DSA and/or CDE approval (if needed) of the same scope change.

Should a district put the project on hold awaiting OPSC's response or SAB's decision?

It is at the district's discretion whether to continue the project or put it on hold. Districts should weigh how much the change may affect funding and whether the change is a substantial revision of the original plans.

Does OPSC have the authority to make adjustments prior to the audit?

When there is a material change of scope that changes the amount of State funding the project is eligible for, the district must seek approval from the SAB. Otherwise the district will be proceeding with a project that is materially different from the one approved by the SAB, resulting in the MI finding at the time of audit.

It has been the practice of the OPSC to recommend to the SAB to make adjustments prior to a project audit. In our experience, most districts prefer an immediate resolution to the issue, rather than waiting several years before the audit begins. In some cases, it is not possible for the district to proceed with the project unless an adjustment to the apportionment is made before the audit. For example, SAB provides additional funding for site acquisition for financial hardship districts when the OPSC completes an early site acquisition.

Should OPSC review scope changes that don't affect funding?

The OPSC can assist the district in determining whether the change of scope is material to the SAB approval. Early notification in changes to the project can help avoid questions during the audit. If the change to the project does not require a re-approval by the SAB, the documentation can simply be placed on file to assist the district and the OPSC during project audit.

Please note that some scope changes may at first appear unrelated to funding (e.g. changing the placement of a building, site reconfiguration, etc.). However, funding items such as the additional grant for utilities may be affected. For example, when moving a building to a new location costs may increase (or decrease) for water, gas, communication, electric and/or sewage connections.

Why does a change in construction type, such as a change from modular to permanent classrooms, need to be brought to OPSC/SAB attention?

Potentially, construction type changes may affect funding. For instance, a change from modular to permanent could be considered "line jumping" because some modular projects receive an expedited DSA review and approval, potentially making an apportionment occur earlier than it otherwise would have occurred. In another case, a change from permanent to modular could render the architect's certification false because, if the project was originally submitted as modular, then it may not have met the 60 percent commensurate test.

Why does OPSC need to be involved with DSA and CDE approvals?

The *Application for Funding* (SAB 50-04) requires a district to certify that it has received appropriate DSA and CDE approvals. It is OPSC's responsibility to verify the accuracy of these certifications at audit. The SAB does not have the authority to fund projects without CDE and DSA approvals. Unless CDE/DSA approvals remain valid, the project is not eligible for State funding. If given the chance to assist districts with scope changes before an audit begins, the OPSC can help in ensuring the project complies with program rules and regulations.

Is the OPSC adding another layer of approval for SFP projects?

In the past, it has been the practice of the OPSC to review scope changes at the request of districts and present them to the SAB, when necessary.

Since the OPSC does not have the authority to approve scope changes, only the SAB can approve scope changes. The OPSC offers these guidelines to help districts navigate the scope change process and avoid audit issues, which may arise several years later during the audit, after funds have already been expended.

What are examples of previous scope change items presented to the SAB?

One financial hardship district received much lower bids than it expected, and notified the OPSC of its intention to increase the size of a MEF. OPSC reviewed the SFP regulations and found the District in compliance, where applicable. Next, the SAB reviewed the scope change, and approved the District's request. In another example, a financial hardship District changed from modular to permanent classroom construction, notified the OPSC, obtained DSA and CDE approval of the scope change, and received the SAB's approval.

Additionally, in the past, several districts have requested rescission of their projects in order to pursue scope changes; these projects did not result in negative audit findings because the districts notified the OPSC.

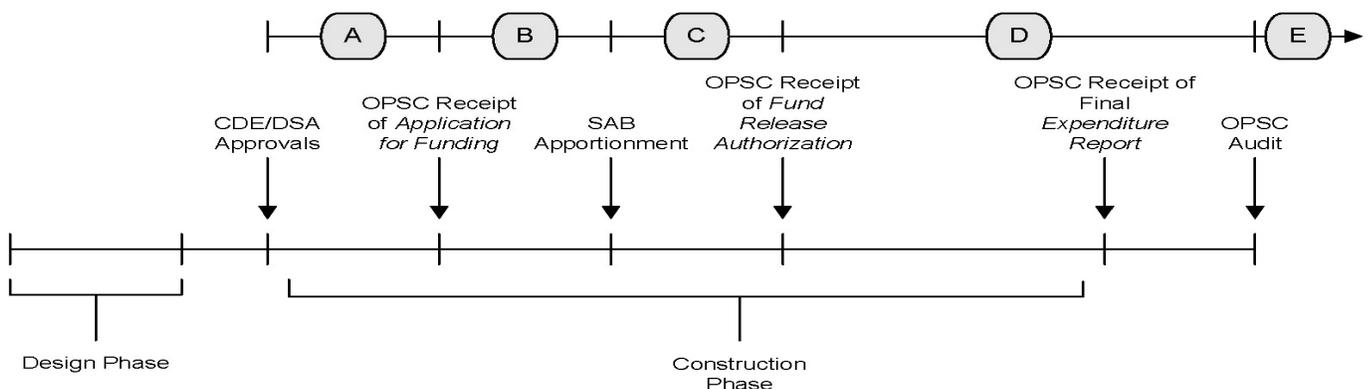
How does the Project Information Worksheet (PIW) relate to this discussion?

Although districts may or may not indicate a scope change on the PIW, the worksheet is not used to audit projects but to conduct an analysis of the relationship between the per-unhoused-pupil grant eligibility and the per-pupil cost of new school construction for grades K – 12, and to meet the requirements for bond accountability.

Change of scope scenarios presented in the December Implementation Meeting

- Scenario A – Change of scope after original CDE and/or DSA Approval(s), but prior to OPSC submittal
- Scenario B – After submittal to OPSC, prior to SAB approval
- Scenario C – After apportionment, prior to fund release
- Scenario D – After fund release
- Scenario E – After OPSC audit begins

The following illustration depicts the major stages of a typical State funded project. The letters at the top correspond to the scenarios discussed in the December 3, 2009 item.



Attachment

AUTHORITY

Education Code (EC) Section 17072.20(b) states, "The application shall include, but not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any."

SFP Regulation Section 1859.21 states, "A School District seeking funding for a modernization or new construction project shall complete and file with the OPSC, the Form SAB 50-04."

SFP Regulation Section 1859.106 Program Accountability Expenditure Audit states, "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." 1859.106 also states, "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...the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings."

EC Section 17070.51 states, "If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board..."

EC Section 17072.30 states, "...the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services (DGS) pursuant to the Field Act..."

EC Section 17072.32 states, "For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the school district that the school district entered into a binding contract for completion of the approved project."

EC Section 17072.35 states, "A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project..."

EC Section 17074.16 states, "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."

EC Section 17267 requires that the governing board of a school district shall, before letting any contract for the construction of a school building as defined in EC Section 17283 according to the plans and specifications, file a set of the plans and specifications with the DGS, accompanied by a fee in the amount fixed by EC Section 17300.

EC Section 17297 states, "...before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services shall be first had and obtained."

EC Section 17307 states that no contract for the construction of any school building is valid and no public money shall be paid for any work done under a contract unless the plans and specifications and estimates comply with the provisions and requirements of the Division of the State Architect (DSA), as representative of the Department of General Services, and that approval has first been obtained in writing.

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
RULES AND OPERATING PROCEDURES
February 4, 2010

PURPOSE OF REPORT

To present suggested rules and operating procedures for the Implementation Committee (IMP).

DESCRIPTION

Currently, the IMP has no established governance, membership, or procedural rules. In an effort to make the IMP meetings more transparent and efficient for IMP members, school districts, and stakeholders, this item provides suggested rules and procedures for IMP input and suggested feedback.

AUTHORITY

Government Code (GC) Chapter 243, Statutes of 1947, established the State Allocation Board (SAB) as a successor to the Post War Public Works Review Board.

Education Code (EC) Section 17070.20 states that the Director of General Services shall administer Chapter 12.5, Leroy F. Greene School Facilities Act of 1998, and shall provide assistance to the SAB as it requires.

EC Section 17070.35 outlines the duties of the SAB, including, but not limited to, the duties of establishing and publishing policies and procedures for the administration of the chapter and adopting rules and regulations pursuant to the Administrative Procedures Act.

The Bagley-Keene Open Meeting Act, set forth in Government Code sections 11120-111321, covers all State boards and commissions and requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by the Act to meet in closed session.

STAFF COMMENTS

The Attachment to this item provides suggested rules and procedures, and defaults to Robert's Rules of Order when no specific procedure or rule is identified.

Attachment

PROPOSED IMP RULES AND OPERATING PROCEDURES BASED ON SENATE AND ASSEMBLY POLICY COMMITTEE RULES

1. **AUTHORITY**
2. **FUNCTIONS**
3. **MEMBERSHIP**
 - a. **Proposed Membership**
 - b. **Proposed Term Limits**
 - c. **Proposed Appointment Process**
 - d. **Proposed Limitations on Designees**
 - e. **Proposed Procedures for Alternates**
4. **OPERATING PROCEDURES**
5. **GUIDING PRINCIPLES**
6. **ANNUAL REVIEW**

1) **AUTHORITY**

Government Code (GC) Chapter 243, Statutes of 1947, established the State Allocation Board (SAB) as a successor to the Post War Public Works Review Board.

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Background

At the November 19, 1986 State Allocation Board meeting, the Office of Local Assistance (OLA –currently known as the Office of Public School Construction, or OPSC) reported on the staff establishment of the Legislative Implementation Review Committee (Imp). This committee was composed of various State agencies, members of the educational community, and others concerned with school facilities.

At the time, the SAB administered the Lease Purchase Program (LPP). Under the LPP, the SAB implemented the LPP by policy and procedures as opposed to regulations approved in accordance with the Administrative Procedures Act (APA) process, which includes an opportunity for the public to comment on the proposals. The establishment of the IMP provided an opportunity for OLA to obtain feedback from stakeholders prior to implementing new legislation.

On March 6, 1992, the Imp committee adopted operating rules. The adopted rules included: initial discussion were limited to Committee members; prior to adjourning the meeting, the Chair solicited questions on topics for the future meetings; the meeting agenda indicated the estimated time necessary to review individual topics; and the public notice of the meeting needed to include a list of the Committee members, their phone numbers, their employer, and the organization they represent.

At the August 14, 1998 Imp committee meeting, the Imp discussed their operating rules, including meeting locations, times, and attendance. Membership was also reviewed. No changes were made at that time and there was no further discussion on adopting operating rules.

2) FUNCTIONS

In 1986, Imp was established by the OLA to implement legislation for the Lease Purchase Program (LPP). In 1993, when the Advisory Committee (a committee established by the SAB in 1985) was disbanded, the Imp inherited the tasks of looking at internal policies and procedures as well.

Currently, IMP serves as an informal advisory body to assist the SAB and the OPSC with policy and legislation implementation. Discussion with practitioners and stakeholders in the school facilities community at IMP meetings assists OPSC staff in vetting proposed regulations and procedures. IMP does not take a vote or provide formal recommendations to the SAB; consensus is a goal, but not a requirement. Feedback from discussions at the meetings is included in OPSC Staff reports to the Board.

3) MEMBERSHIP DISCUSSION

a) Proposed Membership: Categories will be approved by the SAB. Appointment approvals are discussed later in this item.

Seat	Proposed Action	Comments
<u>Current Composition</u>		
SAB Assistant Executive Officer	No change	
OPSC	No change	
Division of the State Architect	No change	
Department of Finance	No change	
Department of Education	No change	
Los Angeles Unified School District	No change	LAUSD serves a large percentage of the State's school children and has needs that are very unique. Their perspective is necessary but is probably not representative of all large or urban districts.

Seat	Proposed Action	Comments
Coalition for Adequate School Housing	Re-classify	See "District Representatives..." in "Proposed Additions"
American Institute of Architects	Re-classify	A School Facility Architect
Small School District Association	Re-classify	See "District Representatives..." in "Proposed Additions"
Suburban School Districts	Re-classify	See "District Representatives..." in "Proposed Additions"
California Association of School Business Officials	Re-classify	A Chief Business Officer for a school district
California County Superintendents Educational Services Association	Re-classify	A County Office Representative
California Building Industry Association	Re-classify	See "District Representatives..." in "Proposed Additions"
State Building Construction Trades Council	Re-classify	See "District Representatives..." in "Proposed Additions"
<p data-bbox="188 1129 444 1161"><u>Proposed Additions</u></p> <p data-bbox="188 1161 623 1230">District Representatives from one of the following classifications:</p> <ul data-bbox="237 1230 623 1335" style="list-style-type: none"> • Urban School Districts • Suburban School Districts • Rural School Districts <p data-bbox="188 1335 228 1367">Or</p> <ul data-bbox="237 1367 623 1612" style="list-style-type: none"> • Large School Districts (enrollment greater than 50,000) • Medium School Districts (5,000 - 50,000) • Small School Districts (less than 5,000) 	Add	<p data-bbox="847 1129 1414 1367">These additions emphasize contributions from district employees and practitioners as opposed to contributions from associations. Current members may still serve as members if they are affiliated with an association, provided that they <i>also</i> represent a specific school district.</p> <p data-bbox="847 1398 1430 1667">It would seem that districts of similar size may have similar needs/problems regardless of locality. If we determine that school district representation is adequate using one of these classifications, size seems to be more objectively defined (natural breaking points in enrollment, generally accepted definitions of small districts, etc.).</p> <p data-bbox="847 1698 1419 1898">Geographical distribution of district representations should also be considered. This representation could be included within small, medium, large or urban, rural, suburban categories with rotation through the years</p>

Seat	Proposed Action	Comments
A Charter School Representative	Add	Charter schools have \$900M in bond funds but currently have no voice at IMP. In order for OPSC to get input, two meetings must be called for each issue affecting charters: one meeting for charters and the regular IMP meeting. Having a charter representative on IMP is more efficient.
A Builder	Add	This position can be valuable for cost information, or general “Does it work?” type information.
A representative from a Taxpayer group	Add	This is for balance in decision making and to further ensure that bond fund usage is transparent. It is consistent with the concept of taxpayer oversight on local bonds. Also, an endorsement from a taxpayer group that understands the needs of the school community and the serious manner in which these bond funds are handled may be beneficial in future bond sales
A bond oversight committee member from a school district	Add	This position allows for the perspective of those often responsible for the local matching share oversight.
Seat	Proposed Action	Comments
<u>Proposed Removal</u> Council of Educational Facilities Planners, International	Remove	CEFPI is an advocate and resource for effective educational facilities. It serves those who use, plan, design, construct, maintain, equip and operate educational facilities. Its removal is meant to emphasize contributions from district employees and practitioners as opposed to contributions from associations.

One seat is proposed to be removed primarily due to re-classifying the membership.

b) Proposed Term Limits - for terms of membership, the changes to the composition of membership noted above would apply:

The following representatives on the committee are subject to a two-year term on IMP:

- School Districts (using the three locality or size categories)
- Chief Business Officer
- School Facility Architect
- Charter School
- A Builder of Schools
- Taxpayer Group
- Bond Oversight Committee Member
- County Office Representative

When a member's two-year term is over, the member must be replaced by another designee. However, the original member may return as a designee to the committee after that two year absence. Furthermore, the IMP is a public process and a member who has been termed-out may continue to participate in the IMP process as a member of the public.

There are no limits to how many two-year terms a member may serve, as long as those terms are not consecutive. IMP will not consist of more than one board member, officer, management or staff irrespective of whether voting or non-voting of any one organization even if those members could serve IMP in different capacities.

The designees from the following organizations are NOT subject to the two-year term limit:

- SAB Assistant Executive Officer
- Office of Public School Construction
- Division of State Architect
- Department of Finance
- Department of Education
- Los Angeles Unified School District

c) Proposed Appointment Process: Appointment to IMP for those Serving Two Year Terms

The request for appointment as a designee on IMP, as detailed below, shall be made by letter to the AEO and the Executive Officer stating the reasons requesting to be a designee. The letter shall also include a resume. The AEO shall announce that applications are being accepted for a position on IMP at the IMP meeting and the OPSC shall post the announcement to the website six months prior to the end of a term.

After consideration of all appointment requests, the main appointment and the appointment of an alternate shall be made jointly by the AEO and the Executive Officer.

The agency and institutional positions shall be determined by the appropriate authority for that agency/institution.

d) Proposed Limitation on Designees

The designee for the following organizations shall be held by school district/LEA employees only and not by an individual employed solely by an association or representing an association:

- School Districts (using the three locality or size categories)
- Chief Business Officer
- Charter School
- County Office Representative

e) Proposed Procedures for Alternates

Each membership category shall have a chosen alternate to sit-in on IMP for the designated representative. There shall be no allowable substitutes other than for the designee and alternative. If the designee will not be able to attend the IMP meeting, the designee must notify the AEO in writing 48 hours in advance with notice about the substitution of the alternate in the designee's place.

4) OPERATING PROCEDURES

- **CHAIR BEGINS MEETINGS ON-TIME:** Out of respect for all involved and the long day, IMP meetings will begin on time or no more than five minutes late. When lunch is taken, it will be limited to one hour.
- **STAFF REPORTS:** Staff will give their report to IMP without interruption. Questions may be asked or comments may be given after Staff has given the complete report. IMP items shall have a Staff analysis accompanying each topic. The OPSC shall provide the analysis to IMP members and post them to the internet no less than 72 hours prior to the meeting.
- **MATERIAL INFORMATION:** In order to be considered by IMP, documents that contain material information pertinent to an IMP item, including those documents presented to any or all of the IMP membership, shall be submitted to OPSC Staff, including the SAB's Executive Officer and Assistant Executive Officer, no less than 72 hours prior to the Imp meeting at which the relevant item is scheduled to be discussed.
- **QUESTIONS:** In order to keep decorum and a sense of order the Chair will recognize IMP members when they raise their hand if they wish to ask questions. The order of the questions will go in the order the Chair visualizes those members who wish to speak.
- **GUEST COMMENTS:** To participate in guest comments, all participants must come to the microphone, state their name, who they represent, and give their comments in no more than five minutes. Guest comments will be taken after IMP members ask their questions.
- **WEB CAM CONSIDERATIONS:** Each time a guest speaker speaks into the microphone, as a matter of courtesy for those watching via webcam, please re-state your name and who you represent.
- **SETTING AGENDA ITEMS:** Imp items may be set on the Imp agenda no more than three times for discussion, unless new information is available for presentation and consideration. Thereafter, the items may be taken to the SAB for direction, action, and/or consideration.

- **FUTURE AGENDA ITEMS:** At the end of each Imp meeting, the Chair will solicit, from committee members, ideas about potential future agenda items to take into consideration with the development of a future IMP meeting.

5) **GUIDING PRINCIPLES**

- *Be honest*
- *Be considerate*
- *Be prepared*
- *Stay on topic*

Purpose:

Begin each meeting with an agenda and vision of what the committee wants to accomplish and what a successful meeting would look like. Set clear expectations by creating agendas that ask questions to focus the work and lead the committee towards a positive and productive meeting.

People:

Arrive to the meeting prepared and ready to work together on finding a solution. Be prepared to offer solutions, not just complaints. Make sure everyone has a clear understanding of their role and feels confident in how they can best contribute to a productive meeting. If IMP members miss more than two meetings without a written notice of absence, then that member may be replaced or become the alternate on the committee.

Process:

Everyone gets the chance to be heard and share ideas. Time will be spent on answering questions, problem solving, and drafting solutions. At the end of the meeting, everyone should be clear on how to move forward, what stands in the way of resolving an issue, and what is expected of them.

Progress:

Revisit the meeting purpose, role, and process frequently to make sure that it is leading towards a productive meeting. At the end of each meeting, the Chair will summarize the direction and to-do list for the next meeting. The Chair will also send out a meeting summary within two weeks of the meeting.

6) **ANNUAL REVIEW**

These rules shall remain in effect until replaced or revised by a majority vote of IMP. Every January, IMP shall review, make amendments, and adopt the operating rules.