

MINUTES
State Allocation Board
March 24, 2010

Upon notice duly given, the monthly meeting of the State Allocation Board was held at the California Department of Education, 1430 N Street, Room 1101, in Sacramento, California on March 24, 2010 at 4:00 p.m.

Members of the Board present were as follows:

- Cynthia Bryant, Chief Deputy Director, Policy, Department of Finance, designated representative for Ana Matosantos, Director, Department of Finance (DOF)
- Scott Harvey, Chief Deputy Director, Department of General Services, designated representative for Ron Diedrich, Acting Director, Department of General Services (DGS)
- Kathleen Moore, Director, School Facilities Planning Division, California Department of Education (CDE), designated representative for Jack O'Connell, Superintendent of Public Instruction
- Lyn Greene, appointee of Arnold Schwarzenegger, Governor of the State of California
- Senator Alan Lowenthal
- Senator Loni Hancock
- Assembly Member Jean Fuller
- Assembly Member Julia Brownley
- Assembly Member Tom Torlakson

Member of the Board absent was as follows:

- Senator Bob Huff

Representative of the State Allocation Board (SAB) was as follows:

Lisa Kaplan, Assistant Executive Officer

Representatives of the Department of General Services, Office of Public School Construction (OPSC), were as follows:

Lisa Silverman, Acting Executive Officer
Juan Mireles, Policy Manager, Program Services

Representative of the Department of General Services, Office of Legal Services, was as follows:

Henry Nanjo, Assistant Chief Counsel

With a quorum present, Ms. Bryant, Chair, called the meeting to order at 4:13 p.m.

Ms. Silverman presented a Resolution to Mr. Rob Cook commending him on his two and one-half years as the Executive Officer of the SAB and the OPSC. The Board thanked Mr. Cook for his service and wished him success in future endeavors.

PRIOR MINUTES

The Board held the February 24, 2010 SAB Minutes over to the April 2010 SAB meeting. However, Senator Lowenthal made clarifying comments regarding the role of the Audit Sub-Committee. He stated that the Audit Sub-Committee would be looking in general at the scope of audits and not micro-managing audits. Mr. Harvey responded that the Director of the DGS would enjoy hearing from the SAB Audit Sub-Committee on things that should be considered as he directs the OPSC, but ultimately, it is the Director's decision.

EXECUTIVE OFFICER'S STATEMENT

The Acting Executive Officer informed the Board of the following:

Update on Bond Sale

The recent March 11, 2010 bond sale provided \$376 million from Proposition 1D to fund school construction projects. Additionally, the Treasurer's Office would also administer a taxable bond sale this week and it is hopeful that this will result in additional funds for the program. The OPSC is working closely with the Treasurer's Office to expedite the certification process with the goal of providing apportionments at the next SAB meeting.

Update on Town Hall Meetings

Together with the Division of the State Architect (DSA), the OPSC conducted three Town Hall meetings on March 5th at the Butte County Office of Education, March 12th at the Merced County Office of Education, and March 19th at the Orange County Office of Education. The OPSC presented a workshop on expediting the application process for Career Technical Education Facilities Program applications and the audit process and tips for navigating through it.

OPSC Office Relocation

The OPSC has moved to the Department of General Services Ziggurat building in West Sacramento. By March 29, 2010, the OPSC was fully relocated to its new location.

Update on Seismic Mitigation Program Projects

The OPSC presented the Piedmont City Unified School District's request for an unfunded approval for a School Facility Program (SFP) Facility Hardship Rehabilitation project that would provide seismic strengthening to the Piedmont High School. This represents the third Seismic Mitigation Program project and the second project for the Piedmont City Unified School District.

OPSC Tentative Workload Plan

For purposes of transparency and workload management, the OPSC attached a tentative workload plan for future State Allocation Board meetings.

DELEGATION OF AUTHORITY

In considering this Item, the Chair called for a roll-call vote to approve the Delegation of Authority as presented and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller	X			
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey	X			
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	9			1

Motion:

Carried X
Failed ___

CONSENT ITEMS

In considering the Consent calendar, the Chair called for a roll-call vote to approve the Consent calendar as presented and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller	X			
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey	X			
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	9			1

Motion:Carried XFailed —**SPECIAL CONSENT**

Piedmont City Unified/Alameda 58/61275-00-02

Monterey Peninsula Unified/Monterey 58/66092-00-001, 002, 003, and 005

Grossmont Union High/San Diego 59/68130-06-001 and 59/68130-08-001

In considering these items, the Chair called for a roll-call vote to approve the staff's recommendation(s) as presented and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller	X			
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey	X			
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	9			1

Motion:Carried XFailed —**SPECIALS/APPEALS*****Material Inaccuracy Overview***

This item was held over to a future SAB meeting at the request of the Board.

Material Inaccuracy Overview – Loss of Self-Certification Penalties

This item was held over to a future SAB meeting at the request of the Board.

SPECIALS/APPEALS (cont.)***Annual Adjustment For School Facility Program Grants***

Ms. Masha Lutsuk, representing the SAB staff, presented this item to the Board. Ms. Lutsuk provided a brief background of the annual grant adjustment and its application to projects. Senator Lowenthal asked if the Board locked-in the 2010 construction cost index (CCI) adjustment for projects, does the Board have the flexibility to provide adjustments in 2011, and would it be through regulation? Several Board members expressed concerns regarding the construction cost index used for making the annual adjustment to the grant. Senator Hancock made a motion to approve staff's Option #1, which included the following:

- Apply the CCI adjustment to SFP unfunded approvals following adoption of the annual grant adjustments by the SAB.
- Projects presented for unfunded approval after March 24, 2010 would receive grants based on a negative 6.74 percent CCI for 2010.
- Delete the sentence "When apportioned, these projects will retain the 2010 level of funding and will not be subject to any further adjustments for CCI changes."
- Declare the January 27, 2010 unfunded approvals to be valid and effective as presented at the January 27, 2010 SAB meeting.
- Direct staff to re-calculate the unfunded approvals presented at the February 24, 2010 SAB meeting with the 2009 CCI level, and present the revised project approvals to the April 28, 2010 SAB meeting.
- Direct staff to utilize SFP grants at the 2010 CCI level for any new unfunded approvals beginning with April 2010; and
- Direct the Implementation Committee to consider the various index options that are available to the SAB and that most accurately reflect the conditions under which school facilities are constructed.

The Chair asked for public comment on this issue. Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH) organization addressed the Board indicating that the CASH organization sent a letter concerning the question of the CCI and about the Lee Saylor Index reflecting labor costs at the prevailing wage level. He also stated that the Board has not yet applied the six percent AB 127 grant increase for 2009 and it has not been applied in 2010. He further stated that had the six percent been applied in 2009, the negative 6.74 would have had a different effect on the grants.

The Chair called for a roll-call vote and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller	X			
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey	X			
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	9			1

Motion:Carried X Failed

SPECIALS/APPEALS (cont.)***Index Adjustment to School Facility Program Grants***

Ms. Masha Lutsuk, representing the SAB staff, presented this item to the Board. Ms. Lutsuk reported that the Board's action at the February 2010 SAB meeting was consistent with the statute (Government Code Section 65995) and that staff would be recommending that the Board confirm the development fee rate maintained at the 2008 level as the final Board decision. Assembly Member Brownley indicated that by reducing the index for school districts the development rate should have been reduced as well. Deputy Attorney General Tom Patton addressed the Board and indicated that his conclusion was based on the reading of Government Code Section 65995 where it provides for upward adjustments only. In considering this item, the Board approved the staff's recommendation as presented.

Energy Efficiency Funds

Mr. Juan Mireles, representing the SAB staff, presented this item to the Board. A motion was made to approve the staff's recommendations, which would: 1) notify school districts of the availability of Energy Efficiency funding and open a one-year period for school districts to apply for funding beginning April 1, 2010 and ending on April 1, 2011, or when the funds are exhausted, whichever occurs first; and 2) direct staff to report back to the Board in one year, or when the funds are exhausted, on the status of the Energy Efficiency funds. The Chair called for a roll-call vote and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller	X			
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey	X			
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	9			1

Motion:

Carried X
Failed

Administrative Costs for Fiscal Year 2009/2010

The Acting Executive Officer presented this item to the Board and requested the approval to reserve the funds for administrative costs for the 2009/2010 Fiscal Year. Senator Lowenthal requested that staff provide a three to five-year comparison of costs, and also indicated that the SAB makes available to the DGS the amounts necessary for the DGS to provide assistance. Mr. Harvey responded that these administrative costs are approved annually as part of the State's budget process and that it is a transparent process. There was much discussion on whether this was merely a ministerial approval or if the Board has to approve the costs within the amount set through the annual Budget Act. Mr. Chris Ferguson, representing the DOF, addressed the Board and stated that the DOF would work with staff in obtaining the three to five-year costs breakdown. The Board held this item over until the May SAB meeting in order to obtain legal opinions from the Attorney General, Legislative Counsel, and the DGS Legal Counsel regarding the Board's statutory authority relating to budgetary costs. Further, the Board asked for a three-year cost breakdown for not just the OPSC but for the other State agencies (the CDE, the State Controller's Office, and the California State Finance Authority) that are involved with the State bond funds. In addition, the Board requested the percentage of administrative costs as it relates to the bond funds.

REGULATIONS/POLICY***Career Technical Education Facilities Program Reservation of Funds Time Extension***

This item was held over to a future SAB meeting at the request of the Board.

Career Technical Education Facilities Program Regulatory Amendments

Ms. Masha Lutsuk, representing the SAB staff, presented this item to the Board. Ms. Lutsuk provided a brief summary of how the program currently works. Ms. Moore stated that she was in support of staff's Option #2, which was to take no action. She stated that the Superintendent of Public Instruction is in full support of the Career Technical Education Facilities Program (CTEFP), and those projects already receive an apportionment at the capped amount so trying to recoup savings earlier in the process does not make sense since the school districts are trying to build quality projects based on their apportionments. In addition, the apportionment is full and final and the savings can be recaptured at the time of audit, which is the same practice for other projects.

Public Comment

- Mr. Tom Duffy, representing the CASH organization, addressed the Board in support of the Board taking no action on this item. He stated that an apportionment is an apportionment and that the SAB does not have the authority to go back to projects that have previously received apportionments and take funding back.
- Mr. Ron Pregmon, representing WLC Architects, addressed the Board also in support of the Board taking no action on this item. He indicated that it would be better to wait until the time of audit because the cost estimates provided by the architects would be more accurate.

The Board adopted staff's Option #2, which was to take no action on this item. Senator Hancock requested staff to provide a report on: 1) what percentage of CTEFP projects was reserved apportionments; 2) what percentage of the projects was shovel-ready; and 3) what kind of projects were they. Senator Hancock stated that this information was needed to align the career technical education academies with what is believed to be the sunrise industries in California. Ms. Moore responded that the CDE would be able to provide her with the information on all the different industry types.

Modernization Funding for Accessibility and Fire Code Requirements

Ms. Masha Lutsuk, representing SAB staff, presented this item to the Board. Mr. Harvey raised the question whether the data collection was necessary for projects where the checklist was not used to determine eligible funding. Ms. Lutsuk responded that it may be unreasonable to ask school districts to compile a checklist; however, in order to determine which option would give school districts more money they would need to perform some kind of analysis that equates to a checklist. She further indicated that the SFP is handicapped by the lack of data collection so by continuing to collect data would have a long-term benefit to the SFP. Senator Hancock made a motion to approve staff's Option #2, which would require school districts requesting the 60 percent option to submit the DSA accessibility and fire code checklists.

Mr. Tom Duffy, representing the CASH organization, addressed the Board in support of staff's Option #2.

REGULATIONS/POLICY (cont.)***Modernization Funding For Accessibility and Fire Code Requirements*** (cont.)

The Chair called for a roll-call vote and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller				X
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey			X	
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	7		1	2

Motion:Carried X Failed

The SAB's legal counsel reminded the Board that the approved motion also included the ability for the Executive Officer to submit the proposed regulatory amendments and the form changes to the Office of Administrative Law.

REPORTS***Status of Fund Releases***

The Acting Executive Officer presented this item to the Board, and the Board accepted the Status of Fund Releases report as presented.

Status of Funds

The Acting Executive Officer presented this item to the Board, and the Board accepted the Status of Funds report as presented.

Order of the Unfunded List

Mr. Juan Mireles, representing the SAB staff, presented this item to the Board. Mr. Mireles provided background on how projects are processed to the Board once school district application packages have been received by the OPSC. He also explained that projects are assigned to the unfunded list based on SAB approval date, OPSC received date, and whether the project is a health and safety project (facility hardship project) and/or a project approved by the SAB for a date change. Ms. Moore expressed a concern regarding the funding aspect and as funding becomes available, facility hardship projects could have to wait in line for that funding. She further suggested that there be a Board discussion about the overall placement of facility hardship projects on the unfunded list since there is limited funding available. Ms. Moore also indicated that it would be problematic that when the Board provides State apportionments to projects that some of the projects maybe skipped because of the bond fund assignment to those projects and the lack of available funding assigned to those bond funds. Mr. Harvey brought up the issue of shovel-ready projects. He suggested that the Board discuss the way in which the Board prioritizes projects and that it look at those projects that are shovel-ready and create jobs. The Chair suggested the creation of a sub-committee comprised of Ms. Moore, Mr. Harvey, and herself to work with staff on the integrity of the unfunded list.

REPORTS (cont.)***Order of the Unfunded List*** (cont.)Public Comment

- Mr. Tom Duffy, representing the CASH organization, addressed the Board and suggested that the OPSC re-contact school districts that checked the box on the Form SAB 50-04, relating to the enforcement of a Labor Compliance Program (LCP), to determine whether they just checked the box to check the box or if an LCP is actually being enforced. If an LCP is being enforced, the OPSC could survey to see if the school district would be willing to forego the compensation for the LCP and receive Proposition 1D funding. This would determine two things: 1) whether or not school districts properly checked the box; and 2) the distribution of Proposition 47, 55, and 1D funds on the street.
- Mr. Lyle Smoot, representing the Los Angeles Unified School District (LAUSD), addressed the Board and expressed concern on the length of time it takes to get LAUSD's applications to the Board. He indicated that the LAUSD could submit as many as 200 applications in one day and sometimes it takes as long as one year to get those applications through the process (deemed complete) and presented to the Board for consideration. He asked the Board to consider that issue as part of the integrity of the unfunded list.

The Board accepted the report.

Financial Hardship Regulations and Bond Accountability

This item was held over to a future SAB meeting at the request of the Board.

Status of Seismic Mitigation Program Funding

Mr. Juan Mireles, representing the SAB staff, presented this item to the Board. Mr. Mireles informed the Board that this report would serve two purposes: 1) provide the Board with a quarterly report on the seismic mitigation funding activity, and 2) provide the Board with an update on requests that the Board had made in terms of getting a definition for imminent threat of collapse. He further stated that the Board had asked that the DSA take a look at a definition for imminent threat of collapse. Ms. Kathy Hicks, representing the DSA, addressed the Board and reported that the DSA was unable to define the term and stated there was no scientific basis for which the DSA would base it and that it would be too subjective. Mr. Harvey stated that the Program's regulations have been amended to expand the shake zone and the building types and that the remaining obstacle is the issue of interim housing. Much of the discussion centered on school districts' inability to pay for interim housing costs, which is not covered under the Seismic Mitigation Program. Senator Hancock requested that the Implementation Committee come back to the Board in about two months with recommendations from the stakeholders as to what would facilitate getting the funds out sooner, and at the same time, the DSA contact as many of the 77 schools that are on the list. She further requested that the DSA specifically find out from the school districts if they are prepared to come in under the current regulations and if they are not prepared to come in, find out what the problems are. This would provide the means of a database in a short period of time in order to provide the Board answers for any policy changes.

Public Comment

Mr. Tom Duffy, representing the CASH organization, addressed the Board regarding the issue of interim housing and how this component is not an allowed cost under the Seismic Mitigation Program. He also stated that he appreciated reading about the \$200,000 that could be administered by the DSA and used to fund the engineering costs (structural reports).

REPORTS (cont.)***Posting of Audit Reports***

Mr. Steve Inman, representing the SAB staff, presented this item to the Board. Mr. Inman provided background on the process by which staff audit reports will be posted to the Government Transparency Website. Senator Lowenthal asked if the audit posting process could be postponed until a recommendation(s) has come from the SAB Audit Sub-Committee to the Board. Ms. Moore stated that she went to the Government Transparency Website to see what things were being posted and she did not see other infrastructure agencies, such as the Department of Transportation, posting audit reports. She further stated that it would be good for the Board to see an audit because it is the completion of a project. The Chair requested that when staff does get ready to post audits (final reports) that the Board simultaneously gets notified by receiving the final report electronically so they are aware that audits have been completed.

Public Comment

- Mr. Lyle Smoot, representing the LAUSD, addressed the Board by stating it was a back-door regulation and it would need to be addressed through regulation. He further indicated that school districts need to be given the opportunity to respond to the final audit report before it becomes public and that there needs to be some kind of appeal process otherwise it may create lawsuits.
- Mr. Tom Duffy, representing the CASH organization, addressed the Board in support of the audits being posted to the Website. He stated that the audits from a State agency should not be anonymous and should be identified by the auditor who performed the audit, with his/her qualifications.

INFORMATION/REFERENCE

State Allocation Board Meeting Dates for the 2010 Calendar Year

School Facility Program Unfunded List as of November 4, 2009

School Facility Program Workload List of Applications Received Through March 10, 2010

Emergency Repair Program Unfunded List as of February 24, 2010

Emergency Repair Program Workload List of Applications Received Through February 24, 2010

Facility Hardship/Rehabilitation Approvals Without Funding as of February 24, 2010

ADJOURNMENT

There being no further business to come before the Board, the Chair adjourned the meeting at 7:47 p.m.



LISA SILVERMAN, Acting Executive Officer