

MINUTES
State Allocation Board
May 26, 2010

Upon notice duly given, the monthly meeting of the State Allocation Board was held in Room 112 of the State Capitol in Sacramento, California on May 26, 2010 at 4:00 p.m.

Members of the Board present were as follows:

- Cynthia Bryant, Chief Deputy Director, Policy, Department of Finance (DOF), designated representative for Ana Matosantos, Director, Department of Finance
- Scott Harvey, Chief Deputy Director, Department of General Services (DGS), designated representative for Ron Diedrich, Acting Director, Department of General Services
- 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
- Senator Bob Huff
- Assembly Member Jean Fuller
- Assembly Member Julia Brownley

Member of the Board absent was:

- Assembly Member Tom Torlakson

Representatives of the State Allocation Board (SAB) were as follows:

Lisa Silverman, Acting Executive Officer
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 4:05 p.m.

PRIOR MINUTES

A motion was made to approve the Minutes for the April 28, 2010 SAB meeting. The Chair called for a roll-call vote to approve the April 28, 2010 SAB meeting Minutes and the motion carried per the following votes:

PRIOR MINUTES (cont.)

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Huff				X
Assembly Member Fuller	X			
Assembly Member Brownley				X
Assembly Member Tom Torlakson				X
Scott Harvey	X			
Kathleen Moore	X			
Lyn Greene	X			
Cynthia Bryant	X			
Total	7			3

Motion:Carried XFailed **EXECUTIVE OFFICER'S STATEMENT**

The Acting Executive Officer informed the Board of the following:

Update to Emergency Earthquake Relief Measures

On May 7, 2010, President Obama signed a federal disaster declaration for the areas hit by the Calexico earthquake. This action makes these areas potentially eligible for federal funding. Subsequent to the Board's action last month, staff expedited the \$4.5 million fund release to the Calexico Unified School District for the Calexico High School project. On May 10, 2010, the Calexico Unified School District re-opened all 16 campuses in the District.

Budget Letter #10-09

On April 27, 2010, the DOF issued Budget Letter #10-09, which specifies that departments need to have bond proceeds in hand before making any binding commitments. The DOF will be evaluating the needs of each department twice a year prior to each bond sale (Spring and Fall). However, it is important that each department manage cash flow otherwise the departments could be left out of a subsequent bond sale.

Charter School Funding Round

In the Consent Specials section of this Agenda, there is an item that provides Unfunded Preliminary Apportionments for 13 applications for the Charter School Facilities Program. This is the result of the Board's decision last year to re-allocate remaining bond authority for this Program. With the activity that has taken place within the Program since the Board's initial action, there was over \$81 million available for this filing round.

OPSC Tentative Workload Plan

For purposes of transparency and workload management, the OPSC attached a tentative 90-day workload plan for future SAB meeting agendas. The Acting Executive Officer highlighted that the Needs of the State Relocatable classroom Program item would be scheduled for the June 2010 SAB meeting. It was further stated that any items added to this calendar may result in other items being postponed to a future SAB meeting.

Town Hall Event

The OPSC and the Division of the State Architect participated in a town hall meeting on May 20, 2010. The purpose of the meeting was to continue the dialogue and seek input from school districts and stakeholders on how to improve the process of getting schools built given the current fiscal challenges the State is facing. Over 100 people participated, either in person or through the Webcast.

CONSENT ITEMS

In considering this Item, the Board approved the Consent calendar as presented.

FINANCIAL 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.

SPECIAL CONSENT

- Siskiyou Union High/Siskiyou 58/70466-00-001***
- John Swett Unified/Contra Costa 58/61697-00-001***
- Julian Union High/San Diego 51/68171-00-002***
- Charter School Facilities Program Unfunded Preliminary Apportionments***

In considering these Items, a motion was made, and it was seconded, to approve the staff recommendations for these four agenda items. The Chair called for a roll-call vote to approve the staff recommendations for all four agenda items 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

Priorities in School Construction Funding

Mr. Juan Mireles, representing the SAB staff, presented this item to the Board. Mr. Mireles provided background information on the item and highlighted the issues that were discussed at the SAB Priorities in School Construction Sub-Committee hearing. He stated that there were a few outstanding issues that did not reach consensus: 1) allowing financial hardship separate site and design projects to participate; 2) the number of days to submit fund releases; and 3) what would the penalty be if the project does not come to fruition. Ms. Moore commented that staff did a good job reflecting the Sub-Committee's recommendations. Mr. Harvey was in agreement with Ms. Moore's comments.

SPECIALS/APPEALS (cont.)***Priorities in School Construction Funding*** (cont.)

Senator Hancock stated that she would be in support of having 90 days to submit the fund releases and the Chair responded that she was in agreement with the 90 day timeframe. The Chair then asked for public comment.

Public Comments

- Mr. Lyle Smoot, representing the Los Angeles Unified School District, addressed the Board in support of the 90-day time period. With regard to the penalty issue, he stated that rather than having the apportionment rescinded, place the projects at the end of the unfunded list as there may be some concerns with full rescissions and the issue of re-application. It may also have the opposite effect of what the Board's intentions are relating to this funding plan.
- Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH) organization, thanked the Board for incentivizing school districts with this funding plan. He commented that site and design projects should be included as participants and was also in agreement with the 90-day time period to submit fund releases and the penalty issue where projects would be placed at the end of the unfunded list. He was not supportive of the re-application issue.
- Ms. Anna Ferrera, representing the California School Facilities Consortium, addressed the Board in support of the 90-day time period. She also stated that site and design projects should be apportioned separately and was in support of moving projects to the back of the unfunded list. She was opposed to the issue of re-application.
- Ms. Andrea Sullivan, representing the Orange County Department of Education, addressed the Board and stated that in order to house students in safe classrooms there is job creation. Students need to be housed in Field Act buildings rather than in store-front leased facilities.
- Mr. Richard Gonzalez, representing Richard Gonzalez and Associates, addressed the Board concerning the wording in Attachment A, #2, last bullet and stated that the way it read was confusing.

The Chair asked if the Board had additional comments prior to taking action on the item. With respect to the issue of site and design projects, Mr. Harvey stated that he was in full support of the trades industry (brick and mortar) to create jobs and would vote accordingly. Ms. Moore framed the goals as being 1) to build and modernize high quality schools in local communities; 2) allocate the remaining funds as soon as possible to get the funds in the local communities; and 3) create jobs in all sectors of the school construction industry. She also discussed the return of funds from the \$415 million and asked what the process would be associated with that scenario. The Chair responded that the funds should go back into the regular program until the results have been achieved and the outcome can be evaluated. Assembly Member Brownley asked how many site and design projects were within the \$415 million and how far down the Unfunded List would the \$415 million go? Mr. Mireles responded that there were eight site and design projects and there were about 55-60 projects that were within the \$415 million. Assembly Member Brownley also wanted assurance that the emergency regulations would be in effect prior to the August 4, 2010 SAB meeting when the \$415 million would be apportioned. She stated that she would feel uncomfortable if the regulations were not in place before going forward with the apportionments. The Chair responded that there was a level of confidence that the regulations would be in place on schedule. The Acting Executive Officer stated that she would provide an update to the Board concerning the status of the emergency regulations in the Executive Officer's Statement at the June 2010 SAB meeting. There were two motions that were put forth concerning this item: 1) Mr. Harvey made a motion, and it was seconded, that the list be defined as construction-ready projects only, not for projects with site and design. The Chair called for a roll-call vote and the motion failed per the following votes:

SPECIALS/APPEALS (cont.)

Priorities in School Construction Funding (cont.)

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	3	4	2	1

Motion:

Carried
 Failed X

2) Ms. Moore made a motion, and it was seconded, to approve the Sub-Committee report for the items that reached consensus; the 75-day timeframe would be changed to a 90-day timeframe to submit fund releases; all projects on the Unfunded List would be eligible to participate (including site and design projects); the penalty issue would be those projects that certified and received State apportionments but did not submit fund releases requests would be placed at the end of the Unfunded List and provided a new unfunded approval date of November 2, 2010; and all school districts were put on notice regarding the process outlined on Attachment A, #2, concerning the letter of intent to be signed by the District Representative of the district. The Chair also stated that the staff recommendation authorizing the Acting Executive Officer to file the emergency regulations with the Office of Administrative Law would include making the technical changes on Attachments A and B that were discussed at this meeting. 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

The Chair reminded the SAB members and the audience that due to the SAB's action on the San Pasqual Valley Unified School District item, the \$415 million available for the Priorities in School Construction Funding was reduced to \$408.3 million.

Julian Union High/San Diego 51/68171-00-000

This item was withdrawn at the request of the District.

Lennox Elementary/Los Angeles 56/64709-00-001 and 002

This item was withdrawn at the request of the District.

SPECIALS/APPEALS (cont.)

Pixley Union Elementary/Tulare 50/72041-00-001

This item was withdrawn.

San Pasqual Valley Unified/Imperial 50/63214-00-001, 002 and 57/63214-00-001

Mr. Dave Zian, representing the SAB staff, presented this item to the Board. Mr. Zian highlighted for the Board the options for the District. Mr. David Schoneman, Superintendent of the San Pasqual Valley Unified School District, addressed the Board and stated that the District was in complete agreement with staff's Option #1, which would approve the District's request for accelerated State apportionments for the San Pasqual Valley High School project (57/63214-00-001) and San Pasqual Valley Elementary School project (50/63214-00-002). Option #1 further provides that should any of the activities contained in these two projects also be eligible for funding by the Federal Emergency Management Agency, the District will be required to repay the State for the duplicated reimbursements. A motion was made, and seconded, to approve the staff's recommendations and fund the two projects through the remaining \$415 million available for State apportionments outlined in the "Priorities in School Construction Funding" agenda item. The funding for the two projects equated to \$7.5 million, which would leave \$408.3 million available for the "Priorities in School Construction Funding" agenda item. 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	8			2

Motion:

Carried X
 Failed

REGULATIONS

Financial Hardship Regulations and Unfunded Reviews

The Acting Executive Officer presented this item to the Board. A motion was made, and seconded, to approve the staff's recommendations. Mr. Harvey stated that he would be a no vote for this item as he was opposed to the policy of not conducting re-reviews on financial hardship projects. 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	8	1		1

Motion:

Carried X
 Failed

REGULATIONS (cont.)***High Performance Incentive Grant Funding***

Mr. Brian LaPask, representing the SAB staff, presented this item to the Board. Mr. LaPask explained that the OPSC criteria is aligned with the Collaborative for High Performance Schools (CHPS) criteria in order to assist the users out in the field and reduce confusion. He also stated that the funding will increase (double) based on the new criteria, which will open up the Program. He further stated that in addition to the changes in the criteria, updates from the new Energy Code were included (which became effective January 1, 2010), a minimum High Performance Base Incentive Grant (HPBIG) was added that provides \$150,000 for new construction projects and \$250,000 for modernization projects and new construction additions, and it was noted that there will only be one HPBIG allowed per school site. Mr. LaPask also expressed that small school districts and smaller projects would be incentivized to participate in this Program because the HPBIG would be excluded from the 60 percent commensurate calculation. In addition, school board resolutions showing executive level sponsorship would be required for projects requesting High Performance grants. With respect to financial hardship projects and design grant projects, school board resolutions would need to be submitted by the school districts declaring their intent for High Performance grants when requesting funding for their adjusted grant approvals. He outlined the Options for the Board; Option #1 – Do not allow third party verification, all High Performance Incentive grant reviews would continue to be submitted to and reviewed by the DSA; and Option #2 – Allow third party review by non-DSA entities. Senator Hancock requested clarification with regard to the CHPS verification versus the Leadership in Energy and Environmental Design (LEED) certification versus approval by the Division of the State Architect (DSA). Mr. LaPask responded that the CHPS uses the term “verified” to score the project post-construction; LEED uses the term “certification” to mean the same thing; and the DSA uses the term “approval” because the DSA approves the plans and scores the project by adding up the points in the plans and provides the High Performance Rating Criteria score card to the OPSC to determine the funding based on the score card.

Ms. Kathy Hicks, Deputy Director of the DSA, addressed the Board and stated that when the DSA approves the plans, its duty is to ensure code compliance in the plans and the DSA has field construction oversight responsibility. These tasks would not change. The Chair asked for public comment.

Public Comments

- Mr. Tom Duffy, representing the CASH Organization, addressed the Board in support of the item. He stated that the third party verification was an appropriate thing to do because it would simplify the process. He also addressed the issue of data collection through the Project Information Worksheet (PIW) and although he does not object to the use of the PIW, he thought that the working group should review the PIW for the inclusion of the High Performance grants and also determine if there is other information that needs to be included. With regard to what is permissible and not permissible, the California Education Code is a permissive code so he believes that the SAB has the ability to venture down the path of third party reviews.
- Mr. Ted Toppan, representing the Professional Engineers in Good Government, addressed the Board in support of Option #1. He stated that these are bond funds, which are taxpayer's dollars, and should be directed by a State agency and lead by State staff. He also indicated that it is not an appropriate role of a non-State agency to decide the funding of taxpayer dollars when it comes to third party reviews. In fact, he stated that it may not be legal.
- Mr. Bill Orr, Executive Director of CHPS, addressed the Board in support of Option #2 and indicated that by initiating the third party reviews, it would streamline the process, reduce the cost to school districts, and get school districts motivated to want to build green.

REGULATIONS (cont.)***High Performance Incentive Grant Funding*** (cont.)Public Comments (cont.)

- Mr. Ron Samish, architect with Lionakis-Beaumont, addressed the Board and indicated that he has been a part of the working groups for High Performance. He stated that the CHPS and LEED standards are much higher than that of the California Green Code and that he was in support of Option #2.
- Mr. Dave Thorman, State Architect of the DSA, addressed the Board and stated he was in support of Option #1. He clarified that there is a difference in cost between the DSA and the CHPS. The CHPS has two costs; one cost for members and one cost for non-members. He also indicated that there is a serious issue regarding the private sector and the public sector.
- Mr. Dennis Dunston, representing Total School Solutions, addressed the Board and indicated that the system to allow CHPS verifying is a good system. He also stated that this is a State program and was put together thoughtfully and vetted. He also indicated that there are some issues to be worked out but the concept is good.
- Mr. Richard Gonzalez, representing Richard Gonzalez and Associates, addressed the Board regarding the modernization and the PIW. He indicated that the PIW was to be filled out for new construction only. He asked if a modernization project was requesting High Performance grants would only the High Performance section of the PIW be filled out? Mr. LaPask replied yes, that would be correct for purposes of data collection.

Mr. Harvey inquired as to what mechanism is used to change the CHPS criteria? Mr. Orr responded that the CHPS criteria is on the same cycle as the Energy Code, which is on the order of every three years and there is a transparent review process similar to the Administrative Procedure Act (what the Office of Administrative Law utilizes). Mr. Harvey also asked what is the fee? Mr. Orr explained that the CHPS verified fee is based on the size of the project and the number of points that a school goes after. It is \$900 for a school district and for third party reviews, the fees start at \$1,600 to \$5,600. Assembly Member Fuller expressed concerns that extra State bond dollars being provided to school districts based on an outside entity awarding points is conflicting when that service can be accommodated in-house and control maintained over the eligibility playing field, or lose control over the eligibility playing field and place the SAB in a vulnerable position because then the SAB would have to defend those actions in a lawsuit. The SAB's legal counsel concurred with Assembly Member Fuller's statement. Assembly Member Fuller then asked can the awarding of points by a specific outside entity be separated from the eligibility issue (the allocation of taxpayer dollars)? The SAB's legal counsel replied that alternative scales or additional scales could be adopted based on CHPS and LEED that enhance the criteria if the Board chooses to do so. Senator Lowenthal stated that the Governor's Executive Order, S-20-04, provides that all new and renovated State-owned facilities must be LEED certified. Mr. Harvey pointed out that it is not for all State-owned facilities, only new buildings over 50,000 square feet and existing buildings over 10,000 square feet. He also indicated that the California Green Code is what everyone adheres to when constructing/renovating State-owned facilities. The SAB's legal counsel indicated that any more discussion on the third party reviews should be in closed session. Assembly Member Brownley stated that there is a pathway to meet the goal but there needs to be a little more work done with the DSA and others with regard to roles and functions. She expressed the need of not abrogating responsibilities.

REGULATIONS (cont.)

High Performance Incentive Grant Funding (cont.)

Senator Hancock indicated that the DSA sat on the High Performance Program too long and it failed. She asked why can't we make CHPS work, LEED work, and the High Performance criteria work? She stated that all she wants to do is to encourage school districts to put forth a little more effort when it comes to High Performance in school construction. Senator Huff commented that he could not support Option #2 right now but did support Option #1. Ms. Greene questioned how long does it take the DSA to perform a High Performance review? Mr. LaPask responded that the High Performance review is done at the same time as the plan review.

Senator Hancock made a motion, and it was seconded, to approve staff's Option #2 and clarified that the final decision regarding the awarding of points be verified by the DSA (no third party pushes the funding button), a Memorandum of Understanding between the OPSC, in consultation with the DSA, CHPS and the U.S. Green Council be prepared and delineate the agreed upon procedures culminating with the DSA's sign-off to be in place by July 1, 2010, and include the (bolded) language as read into the record by Mr. LaPask [Regulation Sections 1859.71.6(b)(3) and 1859.77.4(b)(3) - For those projects accepted by the DSA utilizing the 2009-CA-CHPS criteria, the Board shall provide \$150,000 (and \$250,000) one time per school site as a HPBIG if the **approved** project **has submitted documentation certifying to the DSA that the project** meets any of the following: . . .] She indicated that this is a cultural shift, is extremely important to incentivize schools to do this, and is trail-blazing for the State of California. The Chair called for a roll-call vote and the motion failed 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	5	4		1

Motion:

Carried
 Failed

Mr. Harvey made a second motion, and it was seconded, to approve staff's Option #1. Assembly Member Brownley asked to modify the motion to include that the parties get together and come back at the next SAB meeting with agreement or no agreement concerning third party reviews. Assembly Member Brownley asked if Mr. Harvey would accept the modification as a friendly amendment and he replied that he would. 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	6	1	2	1

Motion:

Carried
 Failed

REPORTS

State Allocation Board Meeting Dates

The Board accepted the report.

Update to Emergency Earthquake Relief Measures

The Board accepted the report.

INFORMATION/REFERENCE

State Allocation Board Meeting Dates for the 2010 Calendar Year

School Facility Program Unfunded List as of April 28, 2010

School Facility Program Workload List of Applications Received Through May 17, 2010

Emergency Repair Program Unfunded List as of April 28, 2010

Emergency Repair Program Workload List of Applications Received Through April 30, 2010

Facility Hardship/Rehabilitation Approvals Without Funding as of April 28, 2010

ADJOURNMENT

There being no further business to come before the Board, the Chair adjourned the meeting at 7:15 p.m.

A handwritten signature in cursive script, appearing to read "Lisa Silverman".

LISA SILVERMAN, Acting Executive Officer