STATE PUBLIC WORKS BOARD (PWB) OVERVIEW **6842**
(New 5/98)

The following summarizes statutory and administrative provisions relating to PWB.

Origin/Role: PWB was created by the Legislature in 1946 to offset any economic decline due to the cessation of a wartime economy, with two major areas of responsibility:

1. Approving plans, allocating funds and determining the timing of major construction projects of state agencies after appropriations for such projects have been made by the Legislature; and

2. Selection and acquisition of real property for location or expansion of state facilities and programs.

Over the past 50 years, the role of PWB has changed to:

1. Providing a review and approval process for adherence to the Legislature's intent in its appropriation of funds for capital outlay projects;

2. Carrying out various statutory control provisions relating to capital outlay projects;

3. Selecting and acquiring real property for location or expansion of state facilities;

4. Approving sales of surplus property pursuant to annual statutes authorizing the disposal of surplus real property; and

5. Acquiring property and constructing facilities from the proceeds of revenue bonds (also called *lease-revenue bonds*) issued by the board.

Membership: Voting members are the:

1. Director of Finance, who historically has chaired PWB;

2. Director of Transportation;

3. Director of General Services;

4. State Controller (for revenue bond matters only); and

5. State Treasurer (for revenue bond matters only).

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In addition, PWB has the following advisory members: The Director of the Employment Development Department when PWB is engaged in contingency planning for emergency public works per Government Code Section 15799.2; and non-voting legislative advisors (three Senators appointed by the Senate Rules Committee and three Assembly members appointed by the Speaker).

PWB staff: The DOF Capital Outlay unit administers the functions of PWB and provides whatever assistance the board may require. DGS provides staff support for real property acquisitions and sales, and for energy assessment programs.

Meetings: The PWB process, including monthly meetings, is described in Section 6844.

Certifications/notifications to the Legislature that the project is within scope and cost: Prior to board action on any capital outlay appropriation, DOF certifies in writing to the Chairperson of the JLBC, the chairpersons of the respective fiscal committees, and the legislative members of PWB whether the requested action is in accordance with scope and cost as approved by the Legislature. If DOF approves changes to the legislatively approved scope or cost, or both, it must detail the changes and associated cost implications. Such reports also include all proposed or potential augmentations, as well as anticipated recognized deficits in excess of ten percent of the amount appropriated for the capital outlay projects. See additional procedures for certifications/notifications in Sections 6844, 6861, and 6863 of this chapter.

Approval of preliminary plans: Per Government Code Section 13332.11, funds appropriated for capital outlay may not be expended by any state department until DOF and PWB have approved preliminary plans for the project. PWB's approval of preliminary plans ensures that a project proceeding into the working drawing and construction phases is consistent with legislatively approved cost and scope. This requirement does not apply to the Department of Transportation, to higher education segments' non-state funded capital outlay, to the California Exposition and State Fair, or to any project specifically exempted from Section 13332.11. In addition, this provision does not apply to acquisitions, equipment, minor projects, or amounts appropriated specifically for preliminary surveys, studies, or program planning. Finally, PWB processes in general do not apply to the State Water Project.

Project augmentation: Sections 16352, 16352.5, 16354, and 16409 of the Government Code make appropriations and authorize PWB to approve allocations of additional funds to augment construction and acquisition appropriations when projects cannot be undertaken because the cost exceeds the funds available for the projects.

PWB's authority to augment projects is limited to the following by Government Code Section 13332.11:

1. PWB must defer any augmentation in excess of 20 percent of the amount appropriated for a capital outlay project until the Legislature makes additional funds available for the specific project;

2. Augmentations in excess of 10 percent (but no greater than 20 percent) of the amount appropriated for each capital outlay project must be reported to the Chairperson of the JLBC, or his or her designees, 20 days prior to PWB approval.

3. PWB must defer approval of preliminary plans or any portion of an acquisition project if the estimated cost of the total project exceeds 20 percent of the amount appropriated, unless in the case of an acquisition project the board determines that a lesser portion of the property is sufficient to meet the objectives of the project approved by the Legislature.

By resolution, PWB has authorized the Director of Finance to augment projects within the following limits:

1. 10 percent of the total of the official estimate for that portion of the work, including related overhead and contingency expenses for such portion, or $50,000 whichever is the lesser; or

2. The anticipated deficit previously recognized by the board; or

3 $1,000 or less.

See Section 6861 for further discussion of PWB practices in interpreting Government Code Section 13332.11.

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Property acquisition law: The Legislature enacted the property acquisition in 1944, which is now set forth in Government Code Sections 15850–15866. Principal provisions include:

1. PWB selects and acquires real property for state departments when funds are appropriated by the Legislature, except for acquisitions for the following entities: Department of Water Resources; the State Reclamation Board; the Wildlife Conservation Board; the Department of Transportation; the Public Employees Retirement System; the Department of Fish and Game; the State Teachers' Retirement System; the Department of Housing and Community Development; and the State Lands Commission. In addition, PWB approval processes for real property transactions do not apply to projects for the University of California and the California State University which are not funded through state appropriations. (Limited exemptions for the state conservancies have been authorized in statute.)

2. All proposed acquisitions are brought to PWB for site selection and acquisition by negotiation or, if unable to purchase by negotiation, by filing an eminent domain action (Government Code Section 15853). Sites for lands acquired on behalf of the State Park System are selected by the Director of Parks and Recreation (Section 5006, Public Resources Code).

3. Government Code Section 15853 also requires PWB to make reports on the status and timing of park acquisitions to the Legislature. The essential feature are:

   a. For any park acquisition not completed through negotiations and/or condemnation, or abandoned by the Department of Parks and Recreation within six months of commencement of purchase negotiations, notice is given to appropriate fiscal committees and legislative members whose districts are affected; and

   b. Six months after the notice set forth in the preceding text, the same legislators are given the status of the projects, if parcels have been abandoned or not acquired. DGS prepares this report for PWB.

4. PWB may acquire any interest in real property it deems advisable.

5. PWB may purchase furnishings contained with any acquired improvement if the owner agrees to sell.

6. PWB has eminent domain (condemnation) authority as described in Section 6866. Pursuant to Government Code Section 15855 (b), the board is the only state agency that may exercise this authority, with the exception of the following entities:

   a. The Department of Transportation,

   b. The Department of Water Resources,

   c. The State Lands Commission,

   d. The State Reclamation Board,

   e. The Department of Fish and Game,

   f. Hastings College of the Law, and

   g. The University of California.

   Current law and procedure require that certain "evidences" (discussed in Section 6849) must be provided before an acquisition is submitted for board consideration. Until the property acquired is actually needed, jurisdiction lies with DGS (Government Code Section 15862).

   As staff to PWB on acquisition matters, DGS obtains the information needed to assure PWB that:

   - The location of the proposed site meets the requirements of the department for which it is being acquired;
   - The site is suitable for the project's purpose and will not result in increased project costs;
   - The site can be acquired within the funds available and is in accordance with the intent of the Legislature; and

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- The price paid for the property is fully supported by an appraisal.

Sale of surplus property: DGS sponsors an annual bill to authorize disposition of excess state-owned real property (Government Code Section 11011). The legislation typically provides that PWB approves final disposition. However, DGS does not handle the sale of property for the Department of Transportation and the Department of Water Resources, or for properties of the University of California, the California State University or the California Community Colleges acquired through non-state funds.

PWB lease-revenue bonds: PWB is authorized to issue revenue bonds (commonly referred to as lease-revenue bonds). The board administers four lease-revenue programs: public building construction, new prison construction, high technology educational and research facilities in public universities, and energy conservation. For additional information on these programs, see Section 6873.

Contingency plan for emergency public works: If conditions warrant, PWB may develop a contingency plan for emergency public works pursuant to Sections 15799.2 and 15799.4 of the Government Code. The plan consists of capital outlay or maintenance projects that have not been included in the Governor's Budget or otherwise presented for legislative review but which PWB believes would serve a useful public purpose if implemented. PWB then submits the plan to the Governor for incorporation into the annual economic report to the Legislature required by Section 15901 of the Government Code.

Public land trusts: Section 831.5 of the Government Code allows non-profit public land trusts to enter into agreements with the state to preserve open space and allow public access to natural resources and, in return, receive certain immunities from liability for injuries caused by natural conditions of unimproved property. The State Coastal Conservancy can enter into such agreements for projects in the Coastal Zone, and the Tahoe Conservancy can enter into agreements in the Tahoe Basin. PWB is responsible for agreements in the rest of the state.

Department of Parks and Recreation concessions agreements: Public Resources Code Section 5080.20 requires PWB to approve any proposed concessions agreements with a total investment or estimated annual gross sales in excess of $500,000, which has not been approved by the Legislature in the Budget Act. The agreement may not be advertised for bid, negotiated, or amended in any way until PWB has notified the Legislature that:

1. The proposed concession agreement could not have been presented to the Legislature for review and approval or that it is necessary to revise the terms after legislative approval; and
2. It would be adverse to the interests of the public to defer the review and approval to the time the Legislature next considers a budget bill.

PWB may approve the proposed concession after giving at least 20 days written notice to the JLBC and the appropriate fiscal and policy committees.

Long-lead capital outlay equipment: Pursuant to Government Code Section 15792, PWB approval is required for state departments to incur obligations, to be met during the fiscal year following the year of project completion, for the purchase of equipment related to capital outlay projects for which the Legislature has approved construction funds. See also Section 6855, “long-lead equipment.”

Quarterly reports: Client departments must submit quarterly reports to PWB on each project’s progress with respect to schedule, scope, and actual and projected expenditures (Section 6864).