

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

November 7, 2008

Legislative Office Building
Sacramento, CA

Members Present

Katrina Valentine, SAB
Lori Morgan, SAB/OPSC
Fred Yeager, CDE
William Savidge, CASH
Kenn Young, CCESSA
Lettie Boggs, CASBO (Alternate for Margie Brown)
Dennis Dunston, CEFP

Robert Pierce, SSD
Mark DeMan, LAUSD
Debra Pearson, SSDA
Richard Conrad, DSA
Chris Ferguson, DOF

Members Absent

Dean Tatsuno, AIA
Cesar Diaz, SBCTC
Gary Gibbs, CBIA

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

Minutes

Minutes for the September 19 and October 3, 2008 Implementation Committee (IMP) meetings were accepted as presented.

Opening Remarks

The Chair welcomed Chris Ferguson as the new Department of Finance representative on the Implementation Committee. A committee member requested that Seismic Mitigation be added to the IMP future items list. The Chair responded that Seismic Mitigation will be added to the IMP future items list if the State Allocation Board (SAB) determines that there is a need for changes.

An inquiry was made regarding the "Role of the IMP" item on the future items list. The Chair explained that this item may be discussed at a future IMP meeting.

Emergency Repair Program

Office of Public School Construction (OPSC) Staff members Masha Lutsuk and Joel Ryan presented the proposed revisions to the Emergency Repair Program (ERP) forms and regulations.

The OPSC presented three proposals:

- ERP Regulations;
- *Grant Request* (Form SAB 61-03), and;
- *Expenditure Report* (Form SAB 61-04);

ERP Regulations:

At the October 3, 2008 IMP meeting, the OPSC presented proposed changes to the ERP Regulations that would require Local Educational Agencies (LEAs) to submit any ERP savings concurrently with the Form SAB 61-04. In response to concerns raised at the October 3 IMP

meeting regarding increased pressure on project completion timelines, the proposed regulations now feature a three month extended time limit on the Grant Apportionment.

Discussion Points:

A question was raised regarding when the three month extension on the Grant Apportionment will become effective. The OPSC responded that the extension will take effect once the regulations are approved by the Office of Administrative Law (OAL), and will apply to any Form SAB 61-04 due after the effective date of the regulations.

Grant Request (Form SAB 61-03):

The OPSC presented proposed changes to the Form SAB 61-03 to clarify submittal requirements and to distinguish between construction costs, and application preparation and submittal costs. Based on a suggestion offered at the last IMP meeting, Staff added a reference to the Facility Inspection Tool on the Form.

Expenditure Report (Form SAB 61-04):

At the October 3, 2008 IMP Committee meeting, the OPSC presented proposed changes to the Form SAB 61-04, including new sections to assist the LEA in the calculation of the Grant Adjustment amount and a requirement to submit a new ERP Detailed Listing of Warrants Worksheet. In response to a request at the October 3 IMP meeting for greater flexibility in the ERP Detailed Listing of Warrants Worksheet, the proposed revisions now allow for an LEA to submit a worksheet containing the same information in lieu of the ERP Detailed Listing of Warrants Worksheet format.

Discussion Points:

Members inquired whether the Form SAB 61-04 would be required of an LEA that submitted the Form SAB 61-04 prior to the effective date of the revised version, in the event that 15-day letter findings necessitated revisions. Staff clarified that revisions in response to a 15-day letter should be provided on the version of the Form SAB 61-04 in effect at that time, as that would be the only form available. Staff further clarified that the additional requirements on the revised Form SAB 61-04 will only apply to LEAs submitting the initial Form SAB 61-04 after the effective date of the revised Form. The new requirements will not apply to funding requests made prior to regulation revisions, as it has been a long-standing practice to subject applications to Regulations in effect at that time of initial filing.

Staff stated that interest earned on an ERP grant is calculated from the warrant release date to the Form SAB 61-04 signed date. An audience member asked what happens when a district does not begin earning interest on ERP Grant funds when the warrant is released (e.g. the warrant is not deposited right away, etc.). Staff responded that a reasonable determination of interest earned must be made by the LEA and that Staff may review the interest calculation as part of any project audit.

An audience member asked about expenditures made after the Form SAB 61-04 submittal. Staff stated that these expenditures do not qualify for funding pursuant to ERP Regulations. An inquiry was made regarding whether a Notice of Completion must be filed for a project to be considered complete. Other members responded that the LEA certifies on the Form that the project is complete. Staff clarified that the intent of the certification is to ensure that construction activities to mitigate the health and safety threat are completed. The certification does not apply to project close out activities, such as the filing of the Notice of Completion.

A committee member asked whether a savings threshold could be established, whereby amounts lower than the savings threshold would not have to be returned to the State. Staff commented that they will consider this issue.

Next Steps:

Staff agreed to consider the proposed changes and to redistribute the proposal for committee and stakeholder comments.

Financial Hardship Program

This item was previously discussed at the May 16, 2008, September 5, 2008, September 19, 2008, October 3, 2008, and November 7, 2008 Implementation Committee meetings.

OPSC staff members Lisa Silverman, Jason Hernandez, and Steve Inman presented the revised proposed Financial Hardship (FH) regulations. Staff introduced a two track option for FH status: districts may choose a six-month or an eighteen-month track. Staff provided a side by side presentation of the two tracks, which overall was well accepted by committee members and the audience.

Discussion Points:

Concerns were raised regarding the definition of “non-required facilities” provided in the regulations for the 18 month track, and whether this definition is accepted by the Department of Education. The OPSC responded that the introductory remarks for these regulations indicate that the definition is for the purposes of FH review only. A recommendation was made that the OPSC remove the “non-required facilities” language and simply state that the specified encumbrances will not be allowed.

A question was raised regarding why a district cannot switch tracks after the initial selection. The OPSC responded that the purpose of offering the two track option is to streamline the FH program; permitting districts to change tracks would create difficulties, increase the complexity of the review, increase the time required for reviews, and could magnify current concerns about the program. A grace period was suggested for the initial implementation. The OPSC agreed to consider this option.

There was a question regarding why there is language in the six month track about liquidating encumbrances. Staff explained that there are concerns with a school district receiving FH status with the benefit of tying up revenue. If unforeseen circumstances cause a project to be withdrawn or rescinded, there needs to be a mechanism to adjust the district's available funds.

Issues specific to county offices of education (COEs) were raised. A committee member asked that consideration be given to the issuance of Certificates of Participation by COEs for needed administration facilities, since COEs cannot issue bonds and have limited revenue resources. The OPSC responded that they met with a COE group on several occasions, but did not receive assistance in establishing criteria to allow this. The COE group advised the OPSC that since all COEs are different, it was not possible for the group to come up with specific and fair criteria that would apply to all COEs. Staff stated that since no criteria were presented to the OPSC, they were unable to move forward with any changes. Staff agreed to continue discussion with the COE group in the future, if requested. This would be a separate discussion from the current proposed regulation changes.

The issue of small school districts contributing more to their FH projects than larger districts was discussed. An audience member questioned whether the proposed small school district exemption is justified, and felt a loophole could be potentially created if a small district experienced a population growth.

An inquiry was made regarding revising the Redevelopment Agency (RDA) required documents for Financial Checklist Phase II. It was suggested the list be more specific regarding the RDA documents requested. Staff stated that the documents should include an RDA map showing the RDA zones and the school for which the district is requesting FH funding, and an RDA report showing the RDA balances for each redevelopment area.

Next Steps:

Staff agreed to consider the comments received and bring an item back to the December IMP meeting.

Accessibility and Fire Code Requirements for Modernization Projects

OPSC Staff members Rick Asbell, Brigitte Baul, and Matthew Nakao presented proposed regulatory amendments to permanently replace the Modernization Accessibility and Fire Code three percent option with the 60 percent of the minimum work necessary option.

The three percent option may provide districts with excessive funding for accessibility and fire code requirements when the seven percent provided in the base grant is sufficient to provide adequate funding for the accessibility and fire code requirements.

Discussion Points:

An inquiry was raised regarding whether the three percent option may be more beneficial than the 60 percent option to some districts. The OPSC responded that, in general, the 60 percent option is far more beneficial to districts, and that the three percent option does not account for the actual work being done or the base grant amount designated for accessibility and fire code requirements. A comment was made that large projects may benefit more from the three percent option. The OPSC clarified that, in cases when the three percent option would provide more funding than the 60 percent option, the State would be providing more than the 60 percent State share of the accessibility and fire code costs. An inquiry was made regarding the amount of excess funding granted under the three percent option. The OPSC agreed to provide the dollar amount at a future IMP meeting.

Questions were raised regarding why the OPSC is proposing to limit districts' options for accessibility and fire code requirements. The OPSC responded that the SAB approved a one-year trial and requested that the OPSC present a proposal based on the trial findings.

A suggestion was made for the accessibility and fire code requirement cost estimate to include a provision for soft costs. The OPSC agreed to consider this recommendation.

An inquiry was raised regarding whether the OPSC had conducted an analysis of why some districts do not request the excessive cost hardship grant for accessibility and fire code requirements. The OPSC responded that this analysis has not been conducted and was uncertain whether that data is available.

An inquiry was raised regarding whether the OPSC had conducted an analysis to determine if districts requesting the three percent option could have received more funding by requesting the 60 percent option. The OPSC agreed to look into this issue.

An audience member inquired whether the OPSC had conducted an analysis of the 11 modernization projects that hit the 60 percent option cap. The OPSC responded that the projects hit the cap because an extensive amount of accessibility and fire code work was required, and explained that the cap was created because a building must be rehabilitated to conform to the current building code if the cost to modernize the facility exceeds 50 percent of the cost to replace the facility.

Next Steps:

Staff agreed to consider the comments received and present the requested information at the December IMP meeting.

Adjournment and Next Meeting

The meeting adjourned at 3:24 p.m. The next IMP meeting is scheduled for Friday, December 5, 2008 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.