

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

February 19, 2009

State Capitol
Sacramento, CA

Members Present

Katrina Valentine, SAB	Robert Pierce, SSD (Afternoon session)
Juan Mireles, SAB/OPSC (Alternate for Lori Morgan)	Mark DeMan, LAUSD
Fred Yeager, CDE	Richard Conrad, DSA
William Savidge, CASH (Morning session)	Chris Ferguson, DOF
Kathy Tanner, CASH (Alternate for William Savidge— Afternoon session)	Gary Gibbs, CBIA
Mamie Starr, CCESSA (Alternate for Kenn Young)	Steve White, AIA (Alternate for Dean Tatsuno)
Margie Brown, CASBO	Dennis Dunston, CEFP
	Debra Pearson, SSSA (Morning session)

Members Absent

Cesar Diaz, SBCTC

The meeting was called to order at 9:35 am.

Minutes

The Chair announced that a slight revision was made to the minutes for the December 5, 2009 Implementation Committee (IMP) meeting. The revision concerned the response to an inquiry regarding potential concurrent reviews for financial hardship and funding applications. Minutes for the December 5, 2008 Implementation Committee (IMP) meeting were accepted as presented.

Opening Remarks

The Chair announced and congratulated Juan Mireles on his promotion to Policy Manager for Program Services in the Office of Public School Construction (OPSC), and Lisa Silverman on her promotion to Chief of Fiscal Services in the OPSC.

A request was made that the meeting agenda be reorganized for the Potential Priority Funding Order and Potential Unfunded Approvals items to be heard before the Financial Hardship item. The Chair approved this request.

A suggestion was made to postpone the Revised 2009 IMP Meeting Calendar item, which was revised due to State furloughs, until more information is available regarding potential changes to the State furlough schedule under the new budget. The Chair agreed to postpone the revised calendar.

Concerns were expressed regarding the room selection for this meeting, and it was requested that future meetings not be held in the State Capitol Room 4202 due to perceived barriers to open discussion. The Chair noted that the room was the only space available for this meeting.

Potential Priority Funding Order

Overview:

The Chair announced that there would not be a formal presentation on this item since the item was intended to open committee discussion on the topic.

Discussion Points:

In response to an inquiry, the Chair stated that this item would be on the State Allocation Board (SAB) agenda for the Wednesday, February 25, 2009 SAB meeting, at which time a recommendation to the SAB would be presented.

A comment was made that the introduction of priorities would be out of place since current law and regulations instruct project funding, and priorities were never intended for the School Facility Program (SFP).

Concerns were expressed that this discussion may be premature or moot, pending effects of the new State budget and a future Pooled Money Investment Board (PMIB) meeting. A desire was expressed to set parameters on the discussion, and it was stated that the IMP should have a recommendation in the event that the SAB must determine how to allocate funding if the funding made available is not enough to provide fund releases for all of the apportioned projects.

An inquiry was raised regarding whether the PMIB will be able to fund all of the apportioned projects. The Department of Finance (DOF) responded that it is unknown at this time, and commented that the PMIB did not indicate that it would prioritize the funding that it will release, and that program amounts would be determined by the DOF. The DOF added that funding allocated by the PMIB to school facility projects would be administered by the SAB.

Inquiries were raised regarding whether the SAB has the legal authority to establish funding priorities. The OPSC responded that they are discussing this issue with legal counsel.

An inquiry was raised regarding whether the SAB can allow interest on loans to be funded by the State, in the event that districts elect to take out loans to cover delays in State funding. The DOF responded that it was stated at the previous PMIB meeting that General Obligation Bond law does not provide for loan or interest costs. An audience member stated that interest costs have been paid by General Obligation Bond dollars in the past, and that this issue should be addressed immediately by obtaining an Attorney General's opinion.

An inquiry was raised regarding when funding may become available for the \$1.3 billion in apportioned projects that have filed fund releases. The DOF responded that the release of funding is a PMIB decision. The OPSC pointed out that one must keep in mind the total \$2.4 billion in apportionments, especially since some projects may be under contract even if they have not yet filed for fund release. An inquiry was raised regarding why a district would enter into a contract and begin construction without funding. It was noted that some districts do projects in phases, and that judging from the history of the program, an SAB apportionment did mean that money was in place. A comment was made that the financial crisis and funding freeze are unprecedented, and affect districts that have done their due diligence.

An inquiry was raised regarding whether the PMIB could establish a policy that would inform the SAB of how much funding will be released at specified times. The DOF responded that this would be a PMIB decision, but that it would be difficult to project funding availability into the future.

Several concerns were expressed regarding the introduction of priorities. A concern was raised that prioritization could create a situation in which individual districts present their need, similar

to an appeal process. Some were in favor of maintaining date received order, stating that many districts that are not considered “financial hardship” under the SFP regulations are now facing financial hardships due to the PMIB action and the current fiscal crisis. A concern was expressed that establishing new priorities could be punitive to districts that have the local funds to continue projects without State funds. In response to an inquiry, it was stated that approximately 2/3 of the \$1.3 billion in requested fund releases is for one district. Some indicated that it would be difficult to determine the best way to proceed without having an indication of the length of the PMIB freeze.

While consensus was not reached regarding whether priorities should be established, several recommendations for potential priorities were discussed. Recommendations for potential prioritization included:

- Small districts and financial hardship districts
- Contracted projects currently under construction, especially those that cannot continue without State funding
- Projects that could present the biggest liability
- Districts that filed for fund release and started construction prior to the December 17, 2008 PMIB action
- Projects for which contracts were entered into prior to December 17, 2008
- Districts identified as in immediate risk of insolvency
- Certain types of facilities
- Small charter schools, which could normally receive 100% State funding under a matching share loan program, but are not considered financial hardship and may not qualify for outside loans

The suggestion that seemed to be the best received was maintaining the current date order received system as funds become available, with the exception of a narrowly tailored priority for projects that are under contract, under construction, have submitted the request for fund release, and are lacking the funds to continue without State funding. While the proposal was well received by many, concerns were expressed regarding a slippery slope, and regarding projects that would meet all of these criteria but had not submitted a request for fund release. A request was made for OPSC staff to write a very narrowly crafted exemption to date order funding. The OPSC responded that it is desirable to get as much input as possible in developing the recommendation to the SAB.

Comments were made that any priorities would need to address how a project is going to proceed, and that any form of prioritization would need to involve a simple and timely determination to avoid funding delays.

Several district representatives discussed the hardships that their districts are facing due to the fiscal crisis and the funding freeze. Issues discussed included high interest on loans, having to prioritize one project while jeopardizing others, and expenses incurred in order to shut down active construction projects. A request was made for the SAB to release funds for projects that met program requirements, are currently under construction, and filed for a fund release prior to December 17, 2008. A comment was made that districts need to know a time schedule for when funds will become available so that they can answer to their communities.

Comments were made that some districts could have made the fund release cutoff if they had not had to prepare the Project Information Worksheet (PIW). A suggestion was made for districts to work with the OPSC to expedite the completion of the PIW, and for the OPSC to potentially consider suspending the PIW requirement during the fiscal crisis.

Clarification was requested regarding the difference between a financial hardship district and “districts with borrowing restrictions and lack of local bond funds,” as they are listed separately

in the item. An example was provided of a district that does not qualify under the Financial Hardship Program, but has a very low bonding capacity.

Concerns were expressed regarding a potential change to the established rules when districts met compliance with the rules in place prior to the fiscal crisis. One concern specifically mentioned the Overcrowding Relief Grant (ORG) program, which has specific funding cycle cutoff dates. The OPSC clarified that the rules for districts to request apportionments would not change.

The OPSC stated that, despite the passage of a State budget, the State is still in a fiscal crisis, and based on PMIB comments, there is no viable bond market. The OPSC remarked that there is still a serious problem, for which there may not be a solution in the near future.

The Chair stated that there are fund release requests for approximately six facility hardship projects, which concern health and safety issues. Inquiries were raised regarding whether these projects are part of the \$650 million PMIB freeze exemption. The DOF agreed to look into this issue. Concerns were expressed regarding facility hardship projects that are not facing serious financial hardships being prioritized over others, since the crisis is fiscal in nature and some districts may be able to initially finance facility hardship projects without State funds. A comment was made that a facility hardship project could presumably appeal to the SAB, and that the more exceptions are made, the harder it will be to keep the SFP in tact.

A remark was made that even in cases when a district has not started construction, the district faces a legal obligation if a contract is in place. It was noted that the costs incurred when a project is under construction are much greater than costs associated with contract liability; while districts under contract can renegotiate or terminate contracts for a relatively small cost, districts may risk financial insolvency if projects are under construction. It was also noted that halting construction stops economic activity.

An audience member raised the idea of districts with local funds loaning money to other districts, but noted that it may not be permitted under current law.

The DOF remarked that the PMIB currently has \$7 billion in outstanding loans, and while the first priority traditionally would be to repay the \$7 billion when funds become available, the PMIB could potentially decide to issue additional loans with available funds.

Next Steps:

This item will be on the SAB agenda for the Wednesday, February 25, 2009 SAB meeting. The Chair specified that the Committee members will receive the board item when the SAB members have received it for review.

Potential Unfunded Approvals

Overview:

The Chair announced that there would not be a formal presentation on this item since the item was intended to open committee discussion on the topic.

Discussion Points:

An inquiry was made regarding what would happen if there were no unfunded approvals. The Chair responded that there would either be a large workload list (in which case the OPSC would continue to process applications until the point of taking them to the SAB) or the OPSC would stop accepting applications, the latter being unlikely.

Comments were made in support of unfunded approvals for the following reasons:

- Approvals are critical for districts' planning purposes to know their place in line in a time when running out of bond funds is a real issue
- Districts want the assurance that when and if the State sells bonds, their projects are in line to be funded
- Approvals indicate to boards and community members that a district is doing its job
- Approvals assure districts that they have completed the application process and will not be subject to subsequent regulation changes
- Approvals are important for programs with specific funding cycle deadlines, such as the ORG
- Having a project in a funding queue can be seen as collateral for loans or other purposes.

The Chair remarked that the SAB has historically had unfunded lists, but that it is important to note that an unfunded list does not constitute a guarantee of funding. The OPSC inquired whether there should be priorities for unfunded approvals, if implemented. The Chair also inquired whether there should be prioritization of projects with contracts signed prior to December 17th if they are on the unfunded approvals list. A committee member responded that date received order should be maintained.

An inquiry was raised regarding how increases or decreases in costs would be handled in the event of an unfunded list. The Chair responded that in the past they have been updated to reflect the current Construction Cost Index (CCI), but that a full review of all costs was not conducted. A recommendation was made that the adjustment should be based on the CCI from the bid or contract date, since the CCI could decrease while a district may have already performed the work with its own funds. It was stated that CCI adjustments in the past were made based on the date of apportionment, not the date of approval, and that to do otherwise might require a statutory change.

An inquiry was raised regarding whether districts would be disqualified for funding consideration for occupying a facility in the absence of unfunded approvals. The OPSC responded that, absent unfunded approvals, districts can still qualify for reimbursement as long as they have an application for funding accepted by the OPSC prior to occupancy.

An inquiry was raised regarding whether unfunded approvals would be funded under a current bond or a future bond, since districts cannot know the requirements of any future bond. The DOF remarked that unfunded approvals are traditionally defined in excess of bonding capacity, and that there would need to be a distinction made between unfunded apportionments and unfunded approvals, as one category is within current bonding capacity, and the other is not. There was agreement on the need for distinct terminology for unfunded apportionments and unfunded approvals.

An inquiry was raised regarding how unfunded approvals would work since funds are occasionally transferred between programs. The OPSC responded that it is uncertain how unfunded approvals would be handled at this time.

The DOF remarked that it is uncertain whether the SAB is permitted to apportion funds under the December Budget Letter. An audience member responded that the Budget Letter discusses State projects, and that the SAB makes the determination for school facilities. The DOF clarified that the Budget Letter itself does not affect SAB apportionments, but freezes their funding source. The DOF remarked that there should be more clarity provided by the PMIB within the next few weeks.

Next Steps:

This item will be on the SAB agenda for the Wednesday, February 25, 2009 SAB meeting. The Chair specified that the Committee members will receive the board item when the SAB members have received it for review.

Financial Hardship Program (Savings and Expenditure Report)

Overview:

OPSC staff members Jason Hernandez and Steve Inman presented changes to the savings regulations and the Form SAB 50-06. The proposed changes to the savings regulations would provide school districts more flexibility during the State's current fiscal crisis. In addition, the changes to the Form SAB 50-06 would allow school districts and the OPSC to better track the use of savings. Staff presented the proposed changes which included the following:

- Provided the option for districts to apply project savings to future un-apportioned projects which have been currently accepted to the OPSC workload.
- Changes to the SAB 50-06 included:
 - Adding back in the Project Savings line.
 - Check boxes to clearly indicate the district's intended use for the savings.
 - The County Assessors Parcel Number to track the use of savings.
 - Updating and clarified form instructions.

Discussion Points:

Some members of the audience mentioned they may have trouble producing a County Assessors Parcel Number for their project. It was stated that a county office of education with a special education project may also have trouble coming up with an Assessors Parcel Number (APN). Another potential issue brought up was cases where more than one school site was located on APN.

Staff stated the APN was needed because often projects are started and stopped by a district through the reduction to costs incurred (RCI) and rescind process. When this happens the new projects are assigned new SFP numbers and often the names of the projects change. This increases the difficulty to track projects and some form of standardization is needed. A member of the committee liked the parcel numbers idea and thought it would make it easier to track the SFP projects. As an alternative a committee member suggested using the cross streets of a SFP project to track it.

It was suggested that districts might not always know what the APN is when applying savings to a new SFP project. They thought there should be some language which allowed for flexibility in the event the district does not initially know the APN. This could allow the districts to submit the information at a later date after it was known.

Next Steps:

Staff agreed to consider the comments received.

Adjournment and Next Meeting

The meeting adjourned at 3:23 p.m. The next IMP meeting is scheduled for Thursday, March 12, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.