

**STATE ALLOCATION BOARD**

1130 K Street, Suite 400  
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

April 3, 2009

Legislative Office Building  
Sacramento, CA

**Members Present**

Juan Mireles, SAB/OPSC (Interim Chair)

Masha Lutsuk, SAB/OPSC (Alternate for Lori Morgan)

Fred Yeager, CDE

William Savidge, CASH

Mamie Starr, CCESSA (Alternate for Kenn Young)

Margie Brown, CASBO

Robert Pierce, SSD

Shawn Atlow, LAUSD (Alternate for Mark DeMan)

Richard Conrad, DSA

Chris Ferguson, DOF

Dennis Dunston, CEFP

**Members Absent**

Cesar Diaz, SBCTC

Gary Gibbs, CBIA

Dean Tatsuno, AIA

Debra Pearson, SSSA

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The meeting was called to order at 9:36 am.

**Minutes**

Minutes for the February 19 and March 12, 2009 Implementation Committee (IMP) meetings were accepted as presented.

**Opening Remarks**

The Interim Chair announced the resignation of Katrina Valentine as Assistant Executive Officer of the State Allocation Board (SAB), and thanked her for her contribution to the IMP Committee.

The Interim Chair announced and congratulated Masha Lutsuk on her promotion to Operations Manager for Program Services in the Office of Public School Construction (OPSC).

An inquiry was raised regarding whether seismic mitigation regulation changes would be presented at a future IMP meeting. The OPSC responded that the SAB requested a presentation on this item for the April 22, 2009 SAB meeting, and that at the time of the SAB request, it was too late to index and prepare the item for the April 3, 2009 IMP meeting. The OPSC further explained that they are working with the Division of the State Architect (DSA) and the Seismic Safety Commission on this issue. A concern was expressed that when the current seismic regulations were developed, there was no transparency regarding why the short period spectral acceleration criterion was set at 1.70, and a request was made that the basis of any changes to the seismic criteria be transparent. It was noted that much of the discussion regarding seismic regulatory review focuses on the short period spectral acceleration criterion, and that the building type restrictions in regulations that are not currently being discussed may also be too exclusive and contribute to low program participation. The OPSC responded that at this time, the SAB has directed them to focus on the 1.70 short period spectral acceleration criterion and the possibility of an unfunded list for seismic mitigation projects; at a later time, additional criteria may be revisited. A comment was made that the Senate Education Committee recently passed Senate Bill 375 (Hancock) relating to seismic mitigation, and that an amendment to the bill deleted some provisions with the understanding that the provisions may

be addressed by regulatory changes, but that the deleted provisions may be reinserted in the bill later, if needed.

## **Potential Priority Funding Order**

### *Overview:*

The OPSC introduced this item, for which there was no formal presentation since it was intended to continue open discussion on the topic. The OPSC stated that the item contains guidelines for the present discussion, based on prior discussions of this topic at the February 19 and March 12, 2009 IMP meetings.

### *Discussion Points:*

The OPSC stated that \$541 million will be made available by the Pooled Money Investment Board (PMIB) to fund school facility projects, and that the SAB will distribute this amount on a first-in, first-out (FIFO) basis.

The OPSC mentioned that the question previously raised regarding the use of School Facility Program (SFP) bond funds was addressed in the item and attachments.

An inquiry was raised regarding why this item had returned to the IMP since the March 25, 2009 SAB item indicated that consensus on the topic had been reached by the IMP. The Interim Chair agreed that consensus had been reached, and explained that the item was brought back to the IMP at the request of the SAB in order to define terms and the criteria for moving forward. The OPSC added that while there was consensus and agreement on this item at the last IMP, no solid recommendation had been developed.

Comments were made that the availability of \$541 million for school facility projects may make the discussion of prioritization a moot point since projects with fund release requests submitted prior to the December 17, 2008 PMIB action can be funded, and few of the remaining projects were being considered for potential exemptions. The Interim Chair responded that the SAB is awaiting clarification regarding the \$541 million. The Department of Finance (DOF) stated that there would be a budget letter released soon that would explain the process in general for all programs. In response to an inquiry, the DOF added that the budget letter will not contain new restrictions, but will provide clarification on the funding available.

An inquiry was raised regarding whether two specific projects are expected to be included in the group of projects to be funded by the \$541 million. The DOF responded in the affirmative.

A comment was made that the PMIB may pursue the sale of additional bonds in April, and that any consideration of potential prioritization should be made for future funding, not for the round that will be funded by the \$541 million. The DOF responded that the PMIB has expressed intent to pursue the sale of taxable bonds at the end of April, but that funding provided by the SAB comes from non-taxable bonds. A comment was made that the PMIB indicated that some of these funds could be used for schools.

In response to an inquiry, the Interim Chair explained that because the \$541 million will be available soon, the SAB will release this amount on a FIFO basis; any prioritization of projects would be for additional money made available at a future date.

Discussion occurred regarding whether the DSA is considering a priority order for plan reviews, or is merely gathering information on shovel-ready projects. The Interim Chair indicated unawareness of the DSA considering prioritization, but that it would nonetheless be a different priority issue than what is currently being discussed.

Many comments were made in support of maintaining FIFO order, based on the received date of the request for fund release. A comment was made that as the PMIB is able to sell bonds, panic is subsiding, and that changing the SFP by establishing priorities could create more panic. It was also noted that FIFO order can be easier for districts' planning purposes since they have a clear idea of their projects' place in line. Several committee members remarked that an appeal process would be appropriate for school districts with unique situations. The Interim Chair commented that the challenge would be the review criteria for appeals, and that the guidelines should be transparent for appeal review. A comment was made that the IMP could discuss appeal criteria in the future if a large amount of appeals are received by the OPSC. In response to an inquiry, the OPSC indicated that the number of letters received from concerned school districts has declined recently.

A concern was raised regarding Financial Hardship projects falling to the bottom of the list if FIFO order is maintained, since Financial Hardship districts cannot move forward until they are assured that there will be funding for their projects, while other districts are currently submitting fund releases.

An inquiry was raised regarding who made the determination that only \$541 million of the \$6.5 billion in recent bond sales would be made available to fund school facility projects. The Interim Chair responded that the PMIB makes this determination, and that it is not something in which the SAB/OPSC is involved.

An inquiry was raised regarding the process by which the \$541 million will be dispersed since the money will be exhausted prior to funding all of the projects with a December 18, 2008 received date, and the projects are currently listed alphabetically by school district name. The Interim Chair responded that the OPSC is aware of this issue and is exploring options, including using the notice to proceed date. It was noted that the time stamp would not be a reliable method. A suggestion was made that a district with a large number of projects for which requests for fund releases were received on December 18, 2008 be permitted to select which of its projects it prefers to have funded in order to use the last of the \$541 million available. A representative of the district stipulated that, if implemented, this would be a one-time occurrence. Support was expressed for this suggestion, and the Interim Chair agreed to consider the recommendation.

An inquiry was raised regarding whether there is a way to determine the dollar amount of projects that met fund release qualifications, regardless of whether a fund release was submitted, since projects that did not submit a request for fund release could still be under contract. In response, it was stated that districts with projects in this situation could submit an appeal request, and that the Committee's earlier concern that case-by-case appeals would inundate the SAB/OPSC should be resolved by the ability to fund \$541 million in projects.

An inquiry was raised regarding whether any exempt projects are included in those expected to be funded by the \$541 million. The OPSC responded in the affirmative, specifying that there are five facility hardship projects, totaling \$22 million.

A comment was made that the SAB should be made aware that the IMP carefully considered options regarding priorities, but that the projects the Committee was most sympathetic to will now be funded by the \$541 million.

An inquiry was raised regarding whether design and site acquisition projects will also be funded in FIFO order by the \$541 million, since the focus of prior discussions was construction projects. The Interim Chair and the OPSC responded in the affirmative, noting that the list currently includes construction, design, and site apportionments.

*Next Steps:*

The Committee's recommendation to maintain FIFO order will be presented at the next SAB meeting.

**Implementation of SB 1556 – Ducheny: School construction**

*Overview:*

OPSC staff member Barbara Kampmeinert presented the proposed revisions and amendments to the SFP resulting from the enactment of Senate Bill 1556, which allows elementary school districts that meet specified criteria to report enrollment on a High School Attendance Area (HSAA) Basis.

Staff proposed that the SFP regulations and SFP forms be amended as follows:

- SFP regulation section 1859.41 for HSAA reporting will be amended to change subsection (b) to subsection (c). Subsection (b) will be changed to indicate the criteria for elementary districts that wish to file using a HSAA basis.
- The instructions to the *Enrollment Certification/Projection* (Form SAB 50-01) and the *Existing School Building Capacity* (Form SAB 50-02) will be revised to include references to elementary school districts reporting enrollment on a HSAA basis.

*Discussion Points:*

A committee member asked if this law impacted only one school district. The Interim Chair indicated that this was currently true. A committee member asked whether the impacted school district had seen and was in agreement with the changes, and inquired as to whether the impacted school district was in attendance. A representative for the impacted school district indicated support for the regulatory changes.

*Next Steps:*

This item will be heard at the April 22, 2009 SAB meeting.

**Charter School Facility Funding**

*Overview:*

OPSC staff members Barbara Kampmeinert and Jason Casillas presented several options for the use of funds remaining in the Unrestricted Charter School Fund in the Proposition 1D Charter School Facility Account (Proposition 1D account) and the Unrestricted Charter School Fund in the Proposition 47 Charter School Facility Account (Proposition 47 account). Of the five options presented by Staff for the available Charter School Facilities Program (CSFP) funds, three involved the creation of a new filing round, while two limited the applicants to those that were on the funding list for the Proposition 1D funding round.

*Discussion Points:*

An inquiry was raised regarding whether projects receiving Proposition 47 funds would be subject to labor compliance program (LCP) requirements. Staff responded in the affirmative, and stated that the OPSC will notify the recipients that LCP compliance is required.

The committee inquired as to the outcome of the charter community stakeholder meeting on April 2, 2009 on this same topic. Staff responded that charter schools did not reach a consensus, as opinions were based on which option would benefit individual charter schools.

Discussion regarding the options centered primarily on workload, fairness, and current and past practice in the administration of the program. Frequently the discussion returned to the limited amount of funds available at this time.

Questions were raised regarding the difference between the first two options. Staff replied that both options allow for a new filing round, and that the only difference is the amount of money available if a specific school district's request was granted by the SAB. A representative for this district explained the district's request to receive funds for its project, which was the first project on the funding list that did not receive funds as there was not enough remaining to fund the project completely. The representative stated that because it was past practice to allow a project reduction in order for districts to receive funding, the district should be allowed to reduce one of the preliminary apportionments that it had received in the Proposition 1D funding round, and to reduce the request for the project that did not get funded, in order to receive approval for both applications.

Audience and Committee members inquired about the specific circumstances of the district's request, including whether or not the sites they were considering to purchase (the basis of the project reductions) had been approved by the California Department of Education (CDE). The district indicated that it has not yet received approval. Staff and others indicated that CDE approval would not be expected at this point. In further discussion, some stated that it seemed fair to support the request as it was relatively consistent with past practice in the program. However, others felt that it was arbitrary and that the district should re-apply and compete with other applicants. Ultimately, committee members expressed that this issue should be presented to the SAB as a separate item since it is specific to one school and is not an overall policy decision.

Concerns were raised regarding the large workload for charters, districts and the OPSC if a new filing round was created for such a limited pool of money. Some were concerned that charter schools would spend money hiring consultants with little hope that their applications would ultimately be funded. Some were concerned that many people would apply and be disappointed when they did not receive funds.

Several audience and committee members suggested an unfunded list if a new filing round was established. Discussion was held regarding the pros and cons of an unfunded list. The pros pointed out by audience and committee members were that the applicants would only have to submit one application. Staff responded that the unfunded list would still require updates to the information and may not save as much time as was hoped, plus new sources of funding may change the program requirements. The Interim Chair responded that regardless of the workload, OPSC would not have a problem doing a new filing round because it would result in several schools receiving funding. In addition, Staff stated that having an unfunded list would require regulatory changes which would delay getting the money out.

Little discussion occurred regarding an option which suggested a new funding round once the Proposition 55 funds become available. As the amount that may return to the program and the timeframe is unknown, those that commented indicated a desire to not wait for it. A suggestion was made to use Proposition 55 money towards an unfunded list.

Support was expressed for both options that would limit applicants to those that were on the funding list for the Proposition 1D funding round, although several comments were made that the option requiring updated information would involve as much work as a new filing round. The OPSC noted that this approach would be limiting and could unfairly keep out charter schools who did not apply for Proposition 1D funding. An inquiry was raised regarding whether the OPSC knew of charter schools that would want to apply that were not on the Proposition 1D list. The OPSC responded in the affirmative, stating that questions are frequently received from charters schools seeking facilities funds, but that exact numbers are unknown.

*Next Steps:*

Staff agreed to consider the comments from this meeting and the charter school stakeholders meeting when preparing the recommendation for the April 22, 2009 SAB meeting.

## **AB 127 Grant Adjustments – Analysis of Project Information Worksheet Data**

### *Overview:*

OPSC staff member Josh Rosenstein presented an item to outline the methodology for analyzing project data provided via the Project Information Worksheet (PIW). The Interim Chair explained that this item is an introductory item to open discussion on the evaluation of PIW data.

### *Discussion Points:*

Inquiries were raised regarding the completed PIW example that was provided as an attachment to the item. In response, the OPSC stated that the attached PIW was an actual PIW submitted by a district to the OPSC, and was selected randomly. The OPSC also stated that the PIW was the final PIW submittal, as opposed to an initial filing.

An inquiry was raised regarding whether the OPSC's analysis excluded PIW data from projects that had linked modernization and new construction components. The Interim Chair responded that data analysis is in the preliminary stages, and that at this point, the OPSC has done some general analysis of all PIW data received, and analysis of the PIWs that indicated projects that were 95 percent complete. The OPSC added that part of the discussion should include whether the entire population of PIWs should be broken into specified subgroups for data analysis.

Comments were made that many different scenarios and project types could skew the data. Suggestions for data that should be removed or separated from the overall analysis included:

- Projects with linked modernization and new construction components
- Additions
- Financial Hardship projects
- PIWs with numbers that do not add up where they should
- Use of Grants projects
- Projects with site development work included in the site acquisition funding

The OPSC noted that PIW data would still be collected for the above project types, and that they cannot exclude too many project types because of the limited amount of data, but that they could potentially analyze and report certain data sets separately.

A concern was expressed that eliminating use of grants projects would remove the highest cost projects from the data set. A suggestion was made to adjust and/or prorate these projects rather than exclude them completely.

Suggestions were made regarding potentially limiting the data for general analysis to the following:

- Final PIW submittals
- New school projects
- PIWs with actual numbers, as opposed to estimates, reported

The OPSC responded that it would be better to use data from PIWs representing projects with a certain percentage of completeness, such as 95 percent complete, rather than restricting data to final PIW submittals.

In response to an inquiry regarding why estimated data is collected, the OPSC responded that they may separate projects by their stage of completion and compare the estimate results with results obtained using actual numbers. An inquiry was raised regarding why school districts would be reporting estimates when their project is ready for fund release, which is when the first PIW submittal is required. A committee member responded that the numbers in early PIWs would not account for change orders.

The usefulness of PIW data was questioned in several comments. It was stated that some projects, such as Financial Hardship projects, are designed to the State budget and therefore may not accurately represent true costs. A comment was made that the data has limited applicability because it represents only a snapshot in time and the information is a moving target. Another remark questioned the accuracy of the data since it is self-reported. The OPSC commented that one method of obtaining greater accuracy would be to structure the online system to prompt the user with correct sums based on data they have entered. A comment was made that regardless of the quality of data provided by districts, the OPSC is responsible for developing a method of analyzing the data obtained.

An inquiry was raised regarding why the PIW is seven pages long while the formula provided in the item utilizes only two pieces of this data, and a suggestion was made that unnecessary components of the PIW be excluded in order to make the PIW useful and easy to complete. An additional comment was made that some data collected on the PIW is available on the SAB board item. The OPSC responded that some of the data collected is requested in order to enable the OPSC to differentiate between project types, such as portable versus permanent classroom construction, and to compare similar projects in the analysis.

Much of the discussion related to suggested changes to the PIW itself, including:

- Removing furniture and equipment costs. The OPSC explained that these items are included because they represent allowable uses of the new construction grant.
- Removing outdoor physical education facilities. The OPSC responded that this information could be used indirectly to group similar types of projects.
- Reporting change orders on the PIW under “total construction costs” rather than as “contingencies.”
- Adding a question to determine whether site development costs are included in the reported site acquisition costs.
- Either eliminating or elaborating instructions regarding reporting “grade and number of pupils served.” The OPSC responded that they would have to review the intent of this portion of the PIW before making changes to the instructions.

The Interim Chair responded that it is early in the process to discuss revisions to the PIW, since the purpose of the present discussion is to discuss methodology for analyzing the data already obtained by the OPSC. The Interim Chair added that the PIW is also used to ensure bond accountability, not only to assess grant adequacy, and that developing the methodology will provide a clearer picture of what information will actually be needed and used. The OPSC added that improvements can be made to the data collection in the future, but the methodology must be developed.

A comment was made that some districts have submitted PIWs that were completed by hand because of time constraints and difficulties correcting mistakes made while using the online version. The OPSC responded that they are aware of these issues, and stated that no requests for fund release have been rejected for PIW issues.

An inquiry was raised regarding whether the PIW is intended to be a data gathering document or a method for determining grant adequacy. The OPSC responded that the PIW is intended to serve both purposes.

The OPSC commented that presenting an average number may not be accurate, and that this was one of the criticisms of the previous grant adequacy study. The OPSC stated that once the analysis is completed, most likely a distribution will be presented, but that at the present time, a methodology needs to be established in order to come up with the distribution.

A suggestion was made that the PIW data be converted to cost per square foot in order to facilitate comparisons between similar projects.

A suggestion was made to exclude the projects that are outliers and use a mean average with narrow deviations, which could then be monitored for movement from year to year, and used as the basis for a grant adjustment recommendation to the SAB. It was stated that the analysis would not be measuring the adequacy of the grants as much as the cost of projects. A comment was made that a similar approach was used by the ad hoc grant adequacy group prior to AB 127.

An inquiry was raised regarding whether there is a target date for presentation of this item to the SAB, and whether the projects that were left open for potential grant adjustments will remain open. The Interim Chair responded that there is not yet a scheduled date to present this item to the SAB, and that the projects left open for potential grant adjustments will remain open. The OPSC added that all projects being approved by the SAB currently receive an unfunded approval. Once these projects return to the SAB for funding approval, they will receive the grant amount that is in effect at that time, which should include the AB 127 adjustment or may be left open to receive the adjustment at a future date.

*Next Steps:*

Discussion on this item will continue at the next IMP meeting.

**Adjournment and Next Meeting**

The meeting adjourned at 3:03 p.m. The next IMP meeting is scheduled for Friday, May 1, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.