STATE ALLOCATION BOARD
1130 K Street, Suite 400
Sacramento, CA 95814

IMPLEMENTATION COMMITTEE MINUTES

May 1, 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)
Lettie Boggs, CASBO (Alternate for Margie Brown)
Robert Pierce, SSD
Shawn Atlow, LAUSD (Alternate for Mark DeMan)
Dave Zian, DSA (Alternate for Richard Conrad; AM only)
Chris Ferguson, DOF
Dennis Dunston, CEFP
Gary Gibbs, CBIA

Members Absent

Cesar Diaz, SBCTC
Dean Tatsuno, AIA
Debra Pearson, SSDA

The meeting was called to order at 9:39 am.

Minutes

Minutes for the April 3, 2009 Implementation Committee (IMP) meeting were accepted as presented.

Opening Remarks

The Interim Chair announced that the process for the email distribution of IMP agenda items to committee members and interested parties will be different, beginning with item distribution for the June IMP meeting. In lieu of email attachments for the items, the email will provide a link to the OPSC website, where the items are posted.

The Interim Chair mentioned that an email was recently distributed to IMP members regarding the vacant Assistant Executive Officer to the State Allocation Board (SAB) position, and encouraged interested parties to apply for the position.

Appreciation was expressed that the items for this meeting were distributed to IMP members and interested parties one week prior to the meeting.

AB 127 Grant Adjustments – Analysis of Project Information Worksheet Data

Overview:

OPSC staff member Josh Rosenstein presented an item to continue the discussion in determining the methodology for analyzing project data provided via the Project Information Worksheet (PIW).

Discussion Points

An inquiry was raised regarding the proposed criteria for excluding specific PIWs from analysis. It was suggested that rather than excluding PIWs with errors or missing information, that these issues be reconciled with the districts. In response, the OPSC stated that this may be possible

but that it will depend on the number of PIWs that will require this further research. Additionally, a concern was expressed regarding substituting data provided by the district with the SAB approved State apportionment information for PIWs with a slight variance between reported funds received and what appears on the approved funding item. The Interim Chair responded this could be possible, but had to be done quickly as to not delay the analysis process.

A committee member suggested excluding projects that had Financial Hardship status only at the design phase as these projects may have been designed down to fit within the Financial Hardship budget; keeping them in the analysis could skew the data. Another member countered that these projects could include potential elements in the design that would allow for either expansion or a phase two of the project. The Interim Chair responded that this would be considered, but that whether these projects were eliminated would depend largely on how many there were and how much the PIW pool would be depleted if they were excluded. It was offered that an option could be to include them in the analysis but keep them in a separate category.

In response to an inquiry regarding how many times a PIW must be submitted, OPSC staff responded that the PIW is required to be submitted a minimum of three times as part of the Governor's Executive Order for bond accountability. Comments were made that the PIW was required too many times within a short period of time and that for the purpose of grant adequacy, final data for complete projects would be the most accurate and useful. The Interim Chair responded that this would be taken into consideration.

An inquiry was raised regarding whether SDC projects could receive a waiver on submitting PIWs if these projects will likely be excluded from the PIW analysis. The Interim Chair responded that this would require further consideration.

Comments were made that projects with portable construction should be removed or kept separate from projects with permanent construction as these projects could skew the data. OPSC staff responded that the analysis could possibly be broken down by construction type and that results could be presented both combined and separate. The Interim Chair added that there is currently no authority to allow for different grant adjustments based on construction type, and to do so would require a legislative change. A committee member added that the majority of portable projects do not request the full number of pupil grants to correspond to State loading standards. Another member offered that projects that did not request the maximum grant amount could be adjusted and fully loaded for the purpose of analysis. OPSC staff responded that that was an option.

A committee member asked if the analysis was going to separate projects by project type. OPSC staff responded that the analysis needs to result in a recommendation regarding the K-6, 7-8, and 9-12 pupil grants. The OPSC stated that the analysis could be separated by project type, but it must be determined which project types will be analyzed to come up with a recommendation.

Concerns were expressed that the more adjustments are made to the data set, the harder it will be to get an accurate representation of the situation.

A committee member asked whether current PIWs had been reviewed to determine how many would pass all the criteria outlined in the item. OPSC staff responded that 200 PIWs had been reviewed using similar criteria and roughly 150 passed. In response, the committee member asked if the PIWs showed a geographic skew. OPSC staff responded that this has not yet been analyzed.

A committee member inquired about looking at projects by size. Another member added that costs are significantly less for projects that add classrooms to existing sites. OPSC staff

responded that addition projects were addressed at the previous committee meeting and were not included in this item.

A committee member inquired as to whether addition projects would be included in the analysis. OPSC staff responded that additions would be included in order to make a recommendation, but that the data could be broken down into subsets for discussion. The Interim Chair added that projects that under-report pupils could either be adjusted or excluded completely. OPSC staff commented that excluding projects that under-report pupils as a whole would remove a significant amount of the data, over thirty percent of the entire PIW pool. A committee member inquired as to why the number of such projects was so high. A concern was expressed that additions may be undertaken because districts cannot afford to build new schools.

A committee member expressed concern that some PIWs may contain artificial data due to districts prorating costs from linked projects. The member indicated that sometimes projects are bid together to take advantage of economies of scale, and that the PIW does not account for this. It was suggested that the PIW be revised to allow for combined project reporting. Staff responded that for PIWs which indicated that the project was bid together with another State funded project, the proposed protocol would call for the exclusion of these projects from the sample.

An audience member questioned the need for PIW submittals for combination projects in light of the fact that these PIWs may be excluded from the analysis, and mentioned that district have to pay additional fees to the architects to split project information for purposes of the PIW reporting. In response, the Interim Chair noted that project costs would be required to be split for audit purposes regardless of any PIW requirement. A committee member noted that audit reporting for combined projects can be done more easily then PIW reporting, as for audits the costs can be simply prorated where as the PIW requires the breakdown by type of costs.

An audience member inquired if it was the intent of the OPSC to make one recommendation for all of the grants or to make separate recommendations for each of the three K-12 grade categories. Staff indicated an expectation to make one recommendation for each of the three categories, but requested assistance in determining in which study multi-level category projects (such as K-8) should be included. A committee member inquired as to the number of these projects. Staff responded that the number is unknown, but that a decision should not automatically be made to exclude them in case the number is significant. Staff proposed three options for multi-level category projects:

1. Exclude these projects from study
2. Include these projects in the predominant category
3. Prorate funding and costs for these projects and include in both categories

A comment was made that the analysis should only focus on typical types of projects and projects with good data.

Audience and committee members expressed concerns about including site development costs in the comparison between State apportionment and project costs. Some stated that these costs should be included as it would be too difficult to separate these costs from the total construction costs. Others argued that site development was one of the biggest variables, and would skew the results if not excluded. An inquiry was made as to why current regulations do not cover all site development costs that are required in a project. The Interim Chair responded that site development costs are not part of the issue regarding the pupil grant increase. OPSC staff pointed out that the PIW can be a useful tool, and that with an improved data collection process, the PIW could possibly be used to make better determinations with regards to site development funding in the future.

Comments were made regarding the method that should be used to compare the data. OPSC staff presented the option of using a bell curve. A committee member expressed the concern that the data analysis would probably not result in a normal distribution. OPSC staff responded that the small sample that had already been reviewed had produced a somewhat normal distribution, but it would not be possible to determine the exact model that would work best until all the data was reviewed. An audience member suggested the use of a scatter plot diagram to show projects with respect to magnitude of building and level of funding.

An audience member inquired as to how the different project dates would be represented on the bell curve. OPSC staff responded that there would be individual curves for K-6, 7-8, and 9-12 projects since a separate recommendation would be given for each category.

An inquiry was made as to how the analysis would account for changes in the bidding climate. OPSC staff responded that an option could be to add a time series to this analysis.

A suggestion was made to use a cost per square foot methodology. This prompted concerns that there were too many variances between projects and it would be difficult to establish standards for this method to be possible. Additionally, it was questioned how the results would be translated back into per-pupil grant data. The Interim Chair responded that this was a possible option, but would not necessarily be the one chosen, or the only one used.

An inquiry was made regarding the possibility that certain districts be exempted from the PIW once it has been determined which projects will be excluded from the study. The OPSC responded that that could be discussed.

Next Steps:
OPSC staff will attempt to develop a more fine-tuned methodology, taking into account the suggestions made at this meeting. Discussion will continue at the next IMP meeting.

60 Percent Commensurate and 150 Percent Regulations

Overview:
OPSC staff members Josh Damoth and Tim Hegedus presented an item to review the 150 Percent rule and 60 Percent Commensurate requirement. The discussion included a brief history of Senate Bill (SB) 50 (Chapter 407, Statutes of 1998 – Greene) and Assembly Bill (AB) 695 (Chapter 858, Statutes of 1999 – Mazzoni), which stipulated how a school district's eligibility is to be created and maintained.

Discussion Points:
Staff and audience members discussed the OPSC's current practice of adjusting a school district's eligibility pursuant to the 150 percent regulation at the time of apportionment rather than at the time of audit, as was the practice prior to 2007. Staff explained that doing the adjustment at the time of apportionment ensures that districts are aware of their new construction eligibility so that projects can be planned accordingly. If the adjustment is not made until the time of audit, a district's baseline may reflect the appearance of excess eligibility for up to seven years after funding. This could lead a district to plan or receive funding when it does not actually have adequate eligibility.

Concerns were raised about specific language in SFP Regulation section 1859.51(i)(7) regarding when the 150 Percent rule is to be applied. Some committee and audience members expressed that the language is confusing and illogical, and some expressed that the regulation may be misaligned with Education Code (EC) Section 17071.75(b). One audience member suggested that SB 50 and AB 695 allow districts to build classroom capacity beyond the pupil grant request. Staff noted that AB 695, enacted after SB 50, requires that a school district's

eligibility baseline must be reduced, based on the State loading standards, for all State and locally funded classrooms that are added to a school district's inventory.

Staff noted that the 150 Percent rule provides greater flexibility than Statute provides. Staff also clarified that after the State Allocation Board (SAB) approved the regulation, it was amended as a result of a public comment made and the resulting regulation was difficult to interpret. Audience and Committee members suggested that clean-up regulations could be an option to make application of the 150 Percent rule clear. Staff suggested that revisions may be necessary and suggested aligning the SFP regulations with the provisions of EC Section 17071.75(b).

Audience and Committee members discussed the 60 Percent Commensurate requirement, expressing concern that it prevents school districts from retaining savings from State funded projects. It was suggested that allowing districts to receive excess funding and retain savings would allow districts to use the savings for other school construction projects, such as the addition of non-classroom facilities to existing sites that need them. Staff stated that the 60 Percent Commensurate requirement was approved by the SAB specifically out of concern for excessive savings, and the requirement allows for up to 40 percent of project costs to be soft costs, based on the cost estimate prepared by the Architect of Record at the time the funding application is submitted.

An audience member inquired whether a district that had met the 60 Percent Commensurate requirement at the time of apportionment would be penalized at the time of audit if the bid climate changed creating actual costs which were considerably less than the estimated costs. One audience member suggested that Financial Hardship districts should be able to keep savings in cases where bid climates become more favorable after funding. Staff responded by stating that keeping savings are not allowed for Financial Hardship districts, and that the OPSC is aware of the importance of ensuring that districts who meet the 60 Percent requirement at the time of application processing are not penalized unjustly at the time of audit. Staff also noted that the OPSC auditors take into account the actual percentage of construction costs of a project compared to the estimate as a potential indicator of audit issues.

Concerns were raised about the interaction and perceived conflict between the 60 Percent requirement and the 150 Percent rule. A Committee member stated that in the cases of low cost projects, districts are forced to reduce the pupil grants and/or supplemental grants requested to meet the 60 Percent requirement, and the reduced pupil grant request triggers an adjustment to the district's baseline eligibility if the pupil capacity of the project is greater than 150 percent of the pupil grant request. Audience members requested that this issue be included in a continued discussion at a future Committee meeting. Staff agreed to bring a continued discussion item back to a future Committee meeting.

Next Steps:
An item for continued discussion on this topic will be presented at the next Implementation Committee meeting.

Facility Inspection Tool

Overview:
OPSC staff member Jon Hicks presented the proposed revisions and amendments to the Facility Inspection Tool (FIT).

Staff explained that the scoring system used on the FIT had a positive bias, and proposed that it be revised to more accurately reflect school conditions noted by inspectors.

Discussion Points:
A Committee member stated that the original FIT and the current proposed revisions resulted from a collaborative process by a workgroup involving several county offices of education, the American Civil Liberties Union, and the OPSC, who have been working together since the first days of the Williams Settlement.

A Committee member inquired whether the workgroup supported the proposed revisions. An audience member who was part of the workgroup stated that these revisions were recommended after extensive research by the workgroup and contributions from some of the largest counties, and that the revisions were essentially a recalibration to the FIT that would not require any retraining of inspectors. A Committee member stated that the workgroup was very cautious of negative ratings during the implementation of the original FIT, and that this inadvertently led to a positive bias in the scoring system.

An audience member asked if emergency regulations were needed to get these revisions implemented more quickly. A Committee member stated that these revisions are not part of the regulatory process, since the FIT is simply a template provided by the OSPC. It was noted that while districts must inspect the components listed on the FIT, they are not required to use this exact template.

A Committee member complimented the process by which these revisions were implemented, specifically the transparency of the process and the inclusion of stakeholders in the process. An audience member stated that a more realistic representation of facility conditions can be beneficial for improvements because positive bias can be detrimental to receiving funding in the future, and more accurately reporting school conditions will help to improve communication of what needs schools have.

Next Steps:
This item will be presented at the next SAB meeting.

Adjournment and Next Meeting
The meeting adjourned at 3:14 p.m. The next IMP meeting is scheduled for Friday, June 5, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.