

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

July 16, 2009

California State Capitol
Sacramento, CA

Members Present

Susan Ronnback, SAB (Chair)

Juan Mireles, OPSC/SAB

Masha Lutsuk, OPSC/SAB (PM only)

Michael O'Neill, CDE (Alternate for Fred Yeager)

Tom Duffy, CASH (Alternate for William Savidge)

Mamie Starr, CCESSA (Alternate for Kenn Young)

Margie Brown, CASBO

Robert Pierce, SSD

Mark DeMan, LAUSD

Chris Ferguson, DOF

Dennis Dunston, CEFP

Gary Gibbs, CBIA (PM only)

Debra Pearson, SSDA

Members Absent

Cesar Diaz, SBCTC

Richard Conrad, DSA

Dean Tatsuno, AIA

The meeting was called to order at 9:43 am.

Minutes

Minutes for the June 5, 2009 Implementation Committee (IMP) meeting were accepted as presented.

Opening Remarks

The Chair announced that, beginning in August, IMP meetings will be webcast for the convenience of those who may be unable to travel to attend the meeting. It was stated that a dedicated e-mail address will be provided so that questions or comments may be submitted.

The Chair announced that the first meeting of the State Allocation Board (SAB) Audits Subcommittee will be held on August 11, 2009 from 9:30 a.m. until 12:00 p.m. in the California State Capitol. The first meeting of the SAB Rules and Regulations Subcommittee has yet to be scheduled.

A Committee Member requested an update regarding the methodology for analysis of Project Information Worksheet data. The Office of Public School Construction (OPSC) responded that an item to update the SAB on the progress of the analysis will be presented at the July 22, 2009 SAB meeting, and that the target date for presentation of the completed analysis is the August 26, 2009 SAB meeting. An inquiry was raised regarding whether or not the methodology will be presented to the IMP members and stakeholders prior to the completion of the item that will be presented to the SAB. The OPSC noted that the same methodology that was previously presented at the June 6, 2009 IMP meeting will be utilized.

60 Percent Commensurate and 150 Percent Regulations*Overview:*

OPSC staff members Tim Hegedus and Masha Lutsuk presented an item to review the 60 Percent Commensurate and 150 Percent Regulations. Tim Hegedus summarized key points from the previous Committee meeting and then opened the item up for discussion.

Discussion Points:

A Committee member expressed agreement with the Coalition for Adequate School Housing's (CASH) letter stating that Senate Bill (SB) 50 overlooked the issue of the inability of the State to capture facilities built entirely with local funds. Therefore, SB 50 did not provide a mechanism for the OPSC to capture this capacity and school districts with local funds could build entire schools with those funds and retain their eligibility for those same students.

Audience and committee members shared a concern that the OPSC was penalizing school districts twice, once at the time of funding with the 60 percent commensurate requirement and then again at the time of audit. They stated that the 150 percent rule encourages districts to add to the scope of their project so they will not have to take the 150 percent hit, thus costing the state more money. They further stated this rule is a disincentive to build efficiently because districts are penalized when asking for fewer grants than the maximum for the capacity of the project. Several committee and audience members suggested changing the rules wherein districts simply take a hit for every classroom (25 pupils for K-6 grade levels and 27 pupils for 7-12 grade levels) but not forcing the 60 percent commensurate rule and then this entire issue would no longer exist. Another committee member suggested allowing districts to request fewer grants than the maximum for the capacity of the project without penalizing the district by applying the 150 percent rule.

OPSC expressed concerns that Regulation section 1859.51(i)(7) is not aligned with the statute. The statute provides a one-for-one reduction of eligibility for each pupil housed in a new construction project.

An audience member expressed concern that the OPSC's change in procedure regarding adjustments pursuant to the 150 percent rule was a violation of Administrative Procedure Act requirements, and that the issue should have been brought before the SAB.

An audience member stated that the OPSC's change in procedure to make adjustments at the time of funding is also a concern because it disregards part of Regulation Section 1859.51(i)(7) by not taking into account whether the district has funded a portion of the project beyond its required contribution.

A Committee member stated that the 60 percent commensurate rule is arbitrary and that the OPSC should relax the rule to allow districts flexibility to build core facilities. It was further stated that the OPSC should average out the costs from project to project. An example was provided where a district designed a project two years ago when construction costs were much higher than today's costs, and the district was forced to redesign the project in order to meet the 60 percent commensurate test.

The Department of Finance expressed support for the 60 percent commensurate rule as currently in regulation. An audience member noted that it is critical to address the 60 percent commensurate requirement at the same time as considering the OPSC's Option One for amendments to Regulation Section 1859.51(a).

The Department of Finance stated that under Option One, Regulation 1859.51 (a) and (i) may be duplicative.

CASH prepared a letter with option and language close to that presented by staff in Option three. CASH and one committee member voiced their preference for Option Three. Another committee member expressed preference for Option One with the stipulation that the 60 percent commensurate rule would not apply.

OPSC staff expressed concerns about the difficulty with the implementation of Option Three. One main concern with Option Three is that if the District spends \$1 over its required 50 percent match, this triggers an eligibility adjustment. Further, this would require an extensive audit be conducted by staff and would also require revising form SAB 50-06 to incorporate a section for the district to report its expenditures in order for OPSC to determine if the district spent beyond the State plus district matching share.

Implementation Committee and audience members expressed concerns that there is no separate funding for Minimum Essential Facilities (MEF's) thus there is a need for them to preserve eligibility in order to fund MEF's.

Audience and Committee members stated that the grants are excessive for addition projects and are insufficient to build MEF's. They also believe there is not enough funding for New School Grants.

A Committee member suggested a Fourth Option, which would allow districts to request only the grants they need for a project, and for OPSC to keep the 60 percent commensurate rule and eliminate the 150 percent rule.

Next Steps:

An item on this subject will be presented for consideration at a future SAB meeting.

Accessibility and Fire Code Requirements for Modernization Projects

Overview:

OPSC staff members Matt Nakao and Brigitte Baul presented an item regarding Accessibility and Fire Code Requirements for Modernization Projects. OPSC staff provided an overview of events that have occurred regarding the discussion of the Accessibility and Fire Code Requirements on Modernization Projects. The item was opened for discussion.

Discussion Points:

A comment was made that the two options presented by Staff for the Accessibility and Fire Code Requirements regulations were reasonable, but that the report the OPSC presented to the SAB in August 2008 concluded that districts tended to choose the 60 percent option over the three percent option and therefore, a choice between the two options would point toward adoption of the 60 percent option. The Chair suggested that making no changes to the regulation, i.e. preserving district choice between the 60 percent and three percent options, could be discussed in the SAB item. However, she stated that the proposed regulation change was directed by the SAB after the Board accepted the Staff report to eliminate the 60 percent option.

The OPSC explained the meaning of "replacement of like kind," and continued to explain the two proposed regulation options. Option one refers to keeping the 60 percent and removing the three percent option. The three percent option would only be applicable to replacement of like projects. Option two is to discontinue the three percent option entirely.

Clarification was requested regarding the OPSC's study of districts that chose the three percent and 60 percent options. The OPSC responded that the data reflected that most districts choose the 60 percent option and that the data covered projects funded from August 2007 to December 2008.

A comment was made that districts should be allowed to do the calculation and choose which option provides the maximum amount of funding.

The OPSC explained that, in the past, while the three percent modernization grant increase was provided to all projects, a study of projects by the Division of State Architect revealed that districts were spending various portions of modernization grants on accessibility and fire code upgrades. This prompted the SAB to direct staff to find a better method for accurately funding such costs. The SAB then adopted, on a trial basis, an additional method, known as the 60 percent funding, to address accessibility and fire code requirements. As directed by the Board, Staff analyzed how districts were utilizing the grants and found that the majority of projects were funded using the 60 percent grant. Thus, Staff recommended that the Board eliminate the three percent funding option, per the Board's previous direction to Staff to select a single method of funding.

An inquiry was raised regarding whether districts are required to submit a cost estimate and checklist(s) under the three percent option. OPSC staff explained that the checklist(s) are required for projects seeking either the three percent or the 60 percent options.

An additional question was asked regarding whether the checklist(s) include(s) the architect's fee estimate. The OPSC replied that the checklist(s) is (are) the estimate.

A comment was made that before the proposed regulation change came out, there wasn't a problem if there was no additional work in the project specifically for accessibility and fire code requirements. With the regulation change, even projects seeking the three percent grant are still required to have a checklist for these construction items, which results in additional cost for the school district. Architects typically do not provide a detailed cost estimate as part of the work because it engenders additional costs to do so.

An inquiry was raised regarding the purpose of eliminating the three percent option for districts. The OPSC responded that, at the August 2008 SAB meeting, the SAB directed the OPSC to present an analysis to determine which was the most viable option.

It was suggested that the SAB item should reference that stakeholders would like flexibility and that there is no need to make any changes to the Accessibility and Fire Code Requirements regulation.

A comment was made that when the 60 percent option was introduced, the three percent option was for small school districts with modernization projects that were between \$150,000 and \$200,000. It was mentioned that the fees required to provide the estimate of work would cost the same as the three percent grant allowance. Having the three percent option allowed small school districts to avoid the cost estimate and thereby the extra expense.

A comment was made to erase the first bullet in Option Two. Another comment was made that accessibility requirements, which are not part of the building and represent an additional cost, may be necessary when a classroom is replaced. In this case, there is a substantial amount of additional work that would not be included. The OPSC commented that it was thought that most of the upgrades were embedded in the building design.

A comment was made that based on the November 2008 data, the OPSC should examine more current projects that received unfunded approvals. The OPSC agreed to take this into consideration.

A comment was made that the SAB that approved the regulations is a different Board now, and the OPSC should educate the new Board about projects and accessibility and fire code requirements.

An audience member commented that a district site was reviewed for the Seismic Program and did not meet the requirements, but the site was deemed unsafe. The district needs to do

replacement area of like kind for the entire school site. The member inquired if the district can use the 60 percent option for costs of bringing the buildings up to code. The OPSC agreed to take this into consideration.

A question was asked regarding whether the 60 percent option includes soft and hard costs, and an opinion was expressed that it should. An inquiry was raised regarding whether it is possible to consider including soft cost in the 60 percent option.

There was concern that the SAB did not receive enough information before accepting the OPSC report and directing Staff to draft regulations to eliminate the three percent option. Input was made on the proposed regulations under Attachment A, (A) to add "soft" and eliminate (B) (3).

The OPSC staff stated concern that the three percent option is not based on actual need, and that it may contribute to over funding projects, which shortens the lifespan of the available bond funds. Furthermore, with time, there may be less need for accessibility and fire code upgrades, since the newer facilities that will be eligible for modernization will already contain many of the necessary upgrades. This will conceivably increase an unnecessary dependency on the three percent option funds.

Next Steps:

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

Adjournment and Next Meeting

The meeting adjourned at 3:19 p.m. The next IMP meeting is scheduled for Thursday, August 6, 2009 at 9:30 a.m. and will be held at the California State Capitol, Room 126, Sacramento, California. The August 6, 2009 meeting will be webcast.