

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, February 23, 2011

TIMELINE OPTIONS FOR CHARTER SCHOOL FACILITIES PROGRAM ADVANCE FUND RELEASE REQUESTS

PURPOSE OF REPORT

To present timeline options for Charter School Facilities Program (CSFP) advance fund releases on the Unfunded Approvals list.

DESCRIPTION

The State Allocation Board (Board) approved the placement of CSFP advance fund releases on the Unfunded Approvals list. This item discusses the impacts of applying existing priority funding fund release requirements on these advances.

AUTHORITY

SFP Regulations Section 1859.90.2 outlines the process of disbursing funds through a priority funding round: "In order to be considered for an Apportionment, the district must provide a written statement signed by an authorized district representative with the 30 calendar day filing period that contains all of the following:

- (a) Request to convert the unfunded approval to an Apportionment; and,
- (b) Concurrence with the 90 day calendar day time limit on fund release; and,
- (c) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within the 90 calendar day time limit and failure to do so will result in the rescission of the Apportionment without further Board action"

SFP Regulations Section 1859.164.2 states the following regarding CSFP advance fund releases: "Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance fund release of funds pursuant to (design) and/or (site acquisition) must have been deemed and maintained financial soundness status from the authority....Prior to the release of any funds, the Charter School Agreements must be executed."

SFP Regulations Section 1859.164.2(b) lists the additional requirements for a CSFP advance fund release for site acquisition of contingent site approval from the CDE and a preliminary appraisal by a qualified appraiser.

BACKGROUND

At its December 2010 meeting, the Board approved the allocation of \$96 million in cash proceeds for CSFP advance fund releases. The CSFP cash was used to fund \$46 million in requests from a previous advance fund release filing round and to conduct another filing round to disburse the additional \$50 million. Requests for the second filing round totaled \$47.5 million.

The Board also approved the placement of all remaining CSFP advance fund releases on the Unfunded Approvals list, with an approval date matching the date of the CSFP Preliminary Apportionment. Now that the two filing rounds to disburse the \$96 million in cash proceeds have closed, there are nine remaining CSFP advance fund releases for design totaling \$8.0 million and eight for site acquisition totaling \$45.5 million, for a total of \$53.5 million in potential requests. These amounts are being placed on the Unfunded Approvals list as of this meeting.

The Board requested feedback on whether the existing priority funding round requirement that a valid *Fund Release Authorization* (Form SAB 50-05) be submitted within 90 days of apportionment is appropriate for CSFP advance fund release requests. This concern was raised because CSFP advance fund releases have different requirements than School Facility Program (SFP) unfunded approvals. The CSFP advance fund release requirements include having a current (within six months) financial soundness determination from the California School Finance Authority (Authority) and entering into the Charter School Agreements. Additionally, requests for site acquisition must also include contingent site approval from the California Department of Education (CDE) and a preliminary appraisal of the site.

STAFF ANALYSIS / STATEMENTS

A stakeholders' meeting was held on January 12, 2011, to discuss the impacts of imposing the existing priority funding round requirements on CSFP advance fund releases. Attendees included representatives from the Office of Public School Construction (OPSC), the Authority, the CDE, and the Coalition for Adequate School Housing, as well as interested charter schools and other stakeholders.

While some felt that the 90 day timeline for design advance fund releases was ambitious, there was understanding that districts on the Unfunded Approvals list also had to contend with short timeframes. Ultimately, there was consensus that a 90 day time limit on submitting a valid fund release request for design advance fund releases was appropriate. The OPSC and the Authority expressed a commitment to work within these timelines to ensure that the charter schools have every opportunity to meet the financial soundness and Charter School Agreements requirements without undue delay on the State's part.

The 90 day time limit on submitting a valid fund release for site acquisition, however, was considered by many to be unrealistic. Many held the opinion that the additional site related requirements are not necessarily achievable within a 90 day timeframe. Charter schools often do not have the resources to start processes such as escrow or site testing prior to securing a guarantee of State funding. Funds spent to begin charter school construction projects typically come from that charter school's general fund. Due to a lack of resources, a charter school may have to wait until official Board approval to begin the site selection process, leaving 90 days to identify a suitable site, obtain an appraisal, gain approval from the CDE, and complete the financial soundness and Charter School Agreements process. Preliminary investigation alone may involve several sites before a suitable site is found that is approvable by the CDE, a process that could easily exceed 90 days. The CDE concurred with this opinion. Additionally, a 90 day timeframe may compel charter schools to settle for a less than ideal site simply to meet the required timelines.

There was consensus among the stakeholders that while imposing any time limit on the site selection process poses a challenge, a period of 180 days in order to allow charter schools to identify a site, commence preliminary testing, and obtain CDE contingent site approval was determined to be fair and in keeping with the goals of priority funding. There was also consensus that since 180 days is a longer timeline than that of other projects, the applicant would have to enter into the Charter School Agreements within 90 days in order to demonstrate progress toward submitting the fund release request.

There was also consensus that projects that do not meet the approved timelines for design and/or site acquisition should receive a new unfunded approval date of their fund release submittal deadline, much like SFP projects in recent priority funding rounds.

In order to include these types of requests in future priority funding rounds, the SFP Regulations should be clarified. The level of revision will depend on the time limit on fund release option chosen by the Board, and the proposed changes are contained in Attachments A and B. Any program changes arising from this item will have no effect on the existing parameters for the two CSFP advance fund release filing rounds that were previously created to disburse the \$96 million in cash proceeds as those processes have already been approved.

It should be noted that the Board decisions based on the Sub-Committee on Priorities in School Construction Funding/Cash Management could potentially have an effect on the timelines discussed in this item. There has been discussion of making regulatory changes that eliminate future priority funding rounds, allowing projects on the Unfunded Approvals list to be apportioned on a flow basis when cash is available. Stakeholders have expressed concern that elimination of these rounds will eliminate the 30 day filing period that districts have been using as lead time to work toward submittal of a valid Form SAB 50-05. Many feel that because of this, the time limit for submittal of a valid Form SAB 50-05 in the absence of a 30 day filing period should be changed from 90 days to 120 days. If this change is instituted for Unfunded Approvals on the Unfunded Approvals list, charter schools would also like to be given the same consideration for their advance fund release timelines.

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OPTIONS**Option 1: Allow 180 days for CSFP advance fund releases for site acquisition**

This option would require CSFP advance fund releases for site acquisition to submit a valid Form SAB 50-05 within 180 days of approval, while requiring advance fund releases for design to fulfill the existing priority funding round requirement of submitting a valid Form SAB 50-05 within 90 days. This allows for what stakeholders feel is an appropriate time frame to begin and complete the site selection and approval process. The Board could impose an additional requirement on CSFP advances by requiring that the Charter School Agreements be executed within 90 days of approval of funding. If the Board chooses this option, staff has provided amended regulations on Attachment A to clarify the time limit on fund release.

Pros:

- Additional time could aid applicants in finding the most suitable site for their needs
- Additional time could allow applicants to complete what may be a complex site approval process
- Charter Schools must show progress by execution of the Charter School Agreements

Cons:

- Cash proceeds could remain unused for up to twice as long for some projects as those in a traditional priority funding round

Option 2: Allow CSFP advance fund releases for site acquisition an alternative timeframe of the Board's choosing**Option 3: Use existing timelines for all types of requests**

This option would require all advance fund releases, including CSFP advance fund releases for site acquisition, to fulfill the existing priority funding round requirements of submitting a valid Form SAB 50-05 within 90 days of approval. If the Board chooses this option, staff has provided amended regulations on Attachment B to clarify the time limit on fund release.

Pros:

- Consistent with priority funding round purpose of getting money out as quickly as possible

Cons:

- May be an unrealistic timeframe for applicants to begin and complete the site selection and approval process for site acquisition requests
- Applicants may have to settle for a less than ideal site to meet timelines

RECOMMENDATIONS

1. Seek Board direction regarding the time limit on fund release for CSFP Advance Fund Releases.
2. Adopt clarifying regulations as shown on either Attachment A or Attachment B as appropriate.
3. Authorize the Executive Officer to file the regulations with the Office of Administrative Law on an emergency basis and begin the regulatory process.

BOARD ACTION

In considering this Item, the State Allocation Board approved staff's Option #1, which would allow 180 days for CSFP advance fund releases for site acquisition. The Board also adopted clarifying regulatory amendments on Attachment A and authorized the Executive Officer to file the regulations with the Office of Administrative Law on an emergency basis and begin the regulatory process.

ATTACHMENT A
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Section 1859.90.2. Priority Funding Round Process.

A priority funding round allows the Board to distribute available funds to districts or charter schools who request an Apportionment or an advance release of funds from a Preliminary Apportionment or Preliminary Charter School Apportionment during a specific 30-calendar day filing period. A priority funding round may be established pursuant to a public notice and announcement by the Board at one of its monthly meetings. The public notice shall be sent to all school districts and charter schools that have projects on the Unfunded List. At the Board's monthly meeting where the priority funding round is announced, a 30-calendar day filing period will also be established, with the filing period to begin the next business day following the date of the Board's meeting. Requests must be physically received by the OPSC by the 30th calendar day to be considered valid. Any funds not apportioned as part of a specified priority funding round shall remain available for any other applicable School Facilities Program project apportionments by the Board. During any priority funding round a district or charter school must submit the Form SAB 50-05 within ~~90 calendar days~~ a specified time period of the Apportionment or approved advance release of funds request, pursuant to (a)(2) or (b)(2) of this section. Projects that apply for any specific priority funding round for which the OPSC does not physically receive an original signature copy of the Form SAB 50-05 within the ~~90 calendar day~~ appropriate time limit shall be rescinded without further Board action.

(a) In order to be considered for an Apportionment, approved advance release of design funds from a Preliminary Charter School Apportionment, or advance release of environmental hardship site acquisition funds from a Preliminary Apportionment, the district or charter school must provide a written statement signed by an authorized district representative within the 30 calendar day filing period that contains all of the following:

- (a1) Request to convert the unfunded approval to an Apportionment or to receive an approved advance release of funds; and
- (b2) Concurrence with ~~the~~ a 90 calendar day time limit on fund release; and
- (e3) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within the 90 calendar day time limit and failure to do so will result in the rescission of the Apportionment or approved advance release of funds request without further Board action; and
- (d4) For those receiving an Apportionment, acknowledgement that by participating in the priority funding round, the district is waiving its right to a standard 18 month timeline for fund release submittal.

(b) In order to be considered for an approved advance release of site acquisition funds from a Preliminary Charter School Apportionment, the district or charter school must provide a written statement signed by an authorized representative within the 30 calendar day filing period that contains all of the following:

- (1) Request to convert the advance release of funds to an approved advance release of funds request; and
- (2) Concurrence with a 180 calendar day time limit on fund release; and
- (3) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within the 180 calendar day time limit and failure to do so will result in the rescission of the approved advance release of funds request without further Board action; and
- (4) Acknowledgement that it must provide evidence that it has entered into the Charter School Agreements within 90 calendar days of approval of the advance release of funds request and failure to do so will result in the rescission of the approval without further Board action.

For the purposes of this section "rescinded" or "rescission" shall mean that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be determined by the Board at the time each priority funding round is approved. The district will not be required to re-submit the application and no further application review will be required.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

ATTACHMENT B
State Allocation Board Meeting, February 23, 2011

Section 1859.90.2. Priority Funding Round Process.

A priority funding round allows the Board to distribute available funds to districts or charter schools who request an Apportionment or an advance release of funds from a Preliminary Apportionment or Preliminary Charter School Apportionment during a specific 30-calendar day filing period. A priority funding round may be established pursuant to a public notice and announcement by the Board at one of its monthly meetings. The public notice shall be sent to all school districts and charter schools that have projects on the Unfunded List. At the Board's monthly meeting where the priority funding round is announced, a 30-calendar day filing period will also be established, with the filing period to begin the next business day following the date of the Board's meeting. Requests must be physically received by the OPSC by the 30th calendar day to be considered valid. Any funds not apportioned as part of a specified priority funding round shall remain available for any other applicable School Facilities Program project apportionments by the Board. During any priority funding round a district or charter school must submit the Form SAB 50-05 within 90 calendar days of the Apportionment or approved advance release of funds request. Projects that apply for any specific priority funding round for which the OPSC does not physically receive an original signature copy of the Form SAB 50-05 within the 90 calendar day time limit shall be rescinded without further Board action. In order to be considered for an Apportionment or approved advance release of funds request, the district or charter school must provide a written statement signed by an authorized district representative within the 30 calendar day filing period that contains all of the following:

- (a) Request to convert the unfunded approval or advance release of funds to an Apportionment or to receive an approved advance release of funds; and
- (b) Concurrence with the 90 calendar day time limit on fund release; and
- (c) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within the 90 calendar day time limit and failure to do so will result in the rescission of the Apportionment or approved advance release of funds request without further Board action; and
- (d) For those receiving an Apportionment, acknowledgement that by participating in the priority funding round, the district is waiving its right to a standard 18 month timeline for fund release submittal.

For the purposes of this section "rescinded" or "rescission" shall mean that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be determined by the Board at the time each priority funding round is approved. The district will not be required to re-submit the application and no further application review will be required.

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