

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, May 26, 2010

PRIORITIES IN SCHOOL CONSTRUCTION FUNDING

PURPOSE OF REPORT

To present a comprehensive action plan that will execute an alternative method of prioritizing apportionments to projects that demonstrate the capability of submitting a fund release request within two to three months from receipt of apportionment.

BACKGROUND

At the April 2010 SAB meeting, the Board discussed the current system of making apportionments and providing fund releases to districts which is based on the date the complete application was received for processing and placed on the Unfunded List. The current system gives no consideration to whether or not the school district is actually ready or able to proceed with the construction of the project. Thus, it is possible that cash available for an apportionment could remain in an account for 18 months while local districts decide whether a project will move forward. The current approach limits the ability to prioritize school construction, stimulate the economy, or create jobs.

Several options for making apportionments were presented as part of the initial discussion, including an option to prioritize projects that are ready to submit a fund release request ("Option 3") using the \$415 million\* of bond funds currently available. At the April 2010 meeting, the Board established the Priorities in School Construction Funding Subcommittee (Subcommittee). The Board directed the Subcommittee to do the following:

- Convene a subcommittee meeting to further discuss the details and concerns with "Option 3", which is the option that proposed to prioritize projects that are ready to submit a fund release request.
- When evaluating this option, consider the impact to various types of projects (such as financial hardship, small school districts, facility hardship, etc.).
- If changes are made, or if the option is implemented, be mindful to not create underground regulations, and make it clear that the Board's actions will not set a new precedent.
- If it appears that it will take too long to implement "Option 3", the Board as a whole would like to revisit the other options.

On May 12, 2010 the Subcommittee convened a meeting to discuss the issues above and other challenges and concerns that may occur with "Option" 3. The Subcommittee members held discussion and heard public testimony on this matter.

AUTHORITY

Education Code (EC) Section 17070.35(a) states, "In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

- (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter...
- (2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary..."

EC Section 17076.10(d) states, "If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application."

SFP Regulation Section 1859.90 states that "With the exception of an Inactive Apportionment, subject to Section 1859.96..., a district must submit the Form SAB 50-05 within 18 months of the Apportionment of the SFP grant for the project or the apportionment will be rescinded without further Board action..."

\*The \$415 million could be impacted by other SAB considerations.

AUTHORITY (cont.)

SFP Regulation Section 1859.93 and 1859.93.1 state that all modernization and new construction applications “shall be funded in the order of receipt of an Approved Application for funding.”

Government Code Section 15503 states, “Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.”

Budget Letter 10-09 requires that if there are insufficient bond proceeds, departments and agencies are responsible for prioritizing the projects that will be funded consistent with the prioritization criteria outlined (including job creation). It also indicates that if bond proceeds are not managed efficiently, additional bonds may not be sold for the program.

SUBCOMMITTEE MEETING DISCUSSION AND OUTCOME

The Subcommittee discussed the following specific issues related to Option 3:

	Subcommittee Consensus	
	YES	NO
1. How to Implement the Funding and Allocation Process Specified in Option 3.....	X	
2. Facility Hardship Projects.....	X	
3. Financial Hardship Projects/Small School District Projects.....		X
4. Equitable Distribution of Funds Between Districts.....	X	
5. Bond Source Switching.....	X	
6. Reimbursement Projects.....	X	
7. Penalties for False Certification (requesting an apportionment and not requesting the fund release)...	X	
8. Data Collection on the Impact of the Process.....	X	
9. Communication Plan to Districts.....	X	

Each topic was discussed at the meeting and is presented below with the Subcommittee’s recommendations.

1. *How to Implement the Funding and Allocation Process Specified in Option 3*

The Subcommittee was concerned with getting the process started as quickly as possible, however there was also a concern with moving forward without making changes to the School Facility Program (SFP) regulations.

**Subcommittee Recommendations:**

- Begin the process of requesting apportionments prior to the regulations going into effect.
- Draft regulations and distribute them quickly and to a wide audience for feedback (In advance of the May SAB meeting).
- Work in advance with the Department of General Services, the Department of Finance, State and Consumer Services Agency and the Office of Administrative Law to fast track the regulations on an emergency basis.
- Have the regulations in place prior to the actual apportionments made by the Board using the Option 3 process.

2. *Facility Hardship Projects*

The Subcommittee discussed whether these projects, which are health and safety projects, should receive additional priority as part of the implementation of Option 3. Currently, these health and safety projects are placed at the top of the Unfunded List for each SAB meeting, and not at the top of the cumulative list. It was suggested that the Board had not yet had a thorough discussion on whether or not these types of projects should receive priority or to what extent received the appropriate amount of priority in the current process.

**Subcommittee Recommendations:**

- Address this issue at a regular SAB meeting in the future as a general discussion topic related to how these projects are placed on the Unfunded List.
- No additional consideration will be provided for these projects as part of the implementation for Option 3.

3. *Financial Hardship Projects/Small School District Projects (two issues)*

- *Issue One- Timing of Fund Release Request*

There was concern that financial hardship districts and small school districts may face challenges in meeting the requirements for fund release within 60 days of an apportionment, which was the original timeframe proposed. Subcommittee members did not fully agree on a new time line but suggested that extending the time period to 75 or 90 days would sufficiently address this issue.

- *Issue Two – Site and Design Apportionments*

There was no agreement from the Subcommittee members as to whether these types of apportionments should be eligible for apportionment under Option 3. There was concern that while these types of apportionments allow hardship projects to acquire school sites and create jobs for architects and consultants, a greater number of construction jobs would be created building schools.

**Subcommittee Recommendations (NO CONSENSUS):**

- The Board as a whole should discuss the amount of time required between apportionment and submittal of the fund release request. It was suggested that 75 or 90 days be considered.
- The Board as a whole should determine whether or not site and design apportionments would be eligible to participate.

4. *Equitable Distribution of Funds Between Districts*

The initial concern raised was that one or more large districts may come in with multiple fund release requests and use up all of the available cash.

**Subcommittee Recommendation:**

After minimal discussion, the Subcommittee members did not feel this was an area of concern.

5. *Bond Source Switching*

The cash available for implementing Option 3 is primarily from Proposition 1D, which means that not all projects on the unfunded list would be able to request an apportionment and a subsequent fund release. The Office of Public School Construction (OPSC) indicated that bond source switching could be accomplished up to the amount of remaining bond authority. Those switching to Proposition 1D will not receive an additional grant for Labor Compliance Program (LCP) costs from Proposition 1D funds, however, LCP costs are considered an eligible expenditure.

**Subcommittee Recommendation:**

The Subcommittee recommended allowing switching and asked OPSC to investigate whether LCP costs could be split funded.

6. *Reimbursement Projects*

The Subcommittee discussed whether projects that had already been completed using local funds could participate in the Option 3 process to submit a fund release for reimbursement. There was some concern with whether or not this practice would lead to job creation.

(Continued on Page Four)

SUBCOMMITTEE MEETING DISCUSSION AND OUTCOME (cont.)**Subcommittee Recommendation:**

Allow reimbursement projects to participate since districts may be able to use the reimbursement funds to move forward on other projects. No additional restraints on reimbursement projects (such as requiring certification that the funds would be used in a certain way) were recommended.

7. *Penalties for False Certification (requesting an apportionment and not requesting the fund release)*

This issue was raised because there was concern that the implementation of Option 3 would have no disincentive for districts to request the apportionment and then not follow through with the fund release. Subcommittee members wanted to ensure that the districts coming forward with apportionment requests were those that could truly put the money to use. Multiple solutions to this problem were presented in an effort to protect districts who encountered unanticipated challenges in securing the construction contract. There was a lack of support for using the Material Inaccuracy provisions as a part of this process. There was a desire to keep the process very simple and clear, and to make sure that districts were aware of any consequences prior to choosing to pursue an apportionment.

**Subcommittee Recommendations:**

- Allow districts on the Unfunded List to choose whether or not to pursue an apportionment (Opt in).
- Reduce the amount of time allowed to submit a fund release from 18 months to 75-90 days after apportionment (The Board as a whole must determine the appropriate timeframe to submit the fund release).
- If a fund release is not submitted within the new timeframe, the apportionment will be rescinded and the district must reapply.
- Allow appeals for unique circumstances which prevent a district from requesting a fund release within the required timeframe.

8. *Data Collection on the Impact of the Process*

The Subcommittee did not object to having the OPSC collect data on the effectiveness of the funding method. The OPSC will report back to the Board in November to share results regarding effectiveness and whether any districts were harmed.

No official recommendation was made; no objections were raised.

9. *Communication Plan to Districts*

Once the Board makes a determination for how to implement Option 3, the OPSC will notify school districts. OPSC will prepare a training video describing the process that will be posted to the website, share the information at COE meetings, and distribute electronic or paper based letters to alert districts to the Board's actions.

No official recommendation was made; no objections were raised.

FULL MEMBERSHIP CONSIDERATIONS

In order to finalize the process proposed for making apportionments and fund releases, the Board as a whole must discuss and make a determination on the following issues:

- Should separate site and design apportionments for financial hardship projects be eligible for apportionments under the proposed process?
- If the process is implemented, should the timeframe to submit a fund release be 60 days, 75 days, 90 days, or something different?

(Continued on Page Five)

FULL MEMBERSHIP CONSIDERATIONS (cont.)

The Board as a whole may also wish to discuss the recommendations made by the Subcommittee. Otherwise, after deciding on the two issues above, the Board may wish to make a determination on the proposed process.

Attached to this item are draft regulations and a document detailing how the proposed process would work. These items have been prepared based on the recommendations of the subcommittee.

RECOMMENDATIONS

1. Approve the procedure outlined on Attachment A.
2. Declare that between May 27 and June 28, 2010 the OPSC will accept requests to convert unfunded approvals to apportionments based on the conditions put forth in the procedure outlined in Attachment A.
3. Approve the emergency regulations on Attachment B.
4. Authorize the Acting Executive Officer to file the emergency regulations with OAL.

BOARD ACTION

In considering this Item, the Board adopted the staff's recommendations, with the modifications as discussed at the meeting. In addition, the Board requested that: 1) the 75-day timeframe be changed to 90 days for submitting fund release requests; 2) all projects on the Unfunded List would be eligible to participate in this "pilot program"; 3) the penalty issue would be that projects that certified and received State apportionments but did not submit fund release requests would be placed at the end of the Unfunded List and provided a new unfunded approval date of November 2, 2010; and 4) all school districts were put on notice regarding the process outlined on Attachment A, #2, regarding the letter of intent to be signed by the District Representative of the district.

ATTACHMENT A  
PROCEDURES FOR PRIORITY FUNDING ROUND  
State Allocation Board Meeting, May 26, 2010

(Rev. 1)

The following outlines the procedures and requirements for Districts to take advantage of the new "Priority Funding Round" process:

1. The Board must take action to establish a one-time 30-day filing period beginning May 27, 2010 and ending June 28, 2010, during which districts opting to participate in the priority funding round shall submit a request to convert an Unfunded Approval to an Apportionment.
2. The request to convert an Unfunded Approval to an Apportionment, signed by an authorized District representative, must state the following:
  - The District understands that the time limit on fund release shall be no more than 7590 days from the date of Apportionment, pursuant to the Board's action on May 26, 2010.
  - The District acknowledges that failure to submit a completed *Fund Release Authorization* (Form SAB 50-05) within the 7590-day period will result in the project being rescinded without further Board action. A rescinded application will revert back to an Unfunded Approval at the bottom of the unfunded list and ~~can not~~ cannot be guaranteed bonding authority. ~~The new Unfunded Approval date will be the next available Board date after the 75 day time limit to submit a Form SAB 50-05 has elapsed. The application will receive a new Unfunded Approval date of November 2, 2010.~~ In the case that multiple rescissions are made by the Board, each separate application will be placed at the bottom of the Unfunded Approvals List in the order of the original Unfunded Approval date (Example: Two applications are rescinded with Unfunded Approval dates of January 27, 2010 and February 24, 2010. The application that received an Unfunded Approval on January 27 would be placed on the unfunded list first, followed by the application that received an unfunded approval on February 24). The District will not be required to re-submit the application and no further application review will be required.
  - ~~The district understands that the request to participate in priority funding round shall supersede any previous project time limit certifications. Any certifications made by a school district that do not apply solely to the 18 month time limit will remain valid.~~
  - The District acknowledges that by participating in the priority funding round, the district is waiving its right to a standard 18-month timeline for fund release submittal.
3. An item will be presented to the next available Board showing all requests and indicating those projects proposed to receive an Apportionment. In the event that the amount of requests received during the 30 day period exceeds the available ~~\$415\$408.3~~ million, the Board shall apportion based on the Unfunded Approval date up to the available cash from each bond source up to a total of ~~\$415\$408.3~~ million identified in Proposition 47, 55, and 1D bond proceeds. Any requests to participate in the priority funding round not converted to Apportionments shall be returned to the districts and the projects shall retain their date order position on the Unfunded Approval list.
4. Should any of the available ~~\$415\$408.3~~ million in indentified bond proceeds remain available after all Apportionments have been awarded by the ~~h~~Board, the funds shall remain available for any other applicable School ~~Facilities~~Facility Program project apportionments by the Board. The Board shall evaluate and decide the method for apportioning the remaining funds.
5. From the date that the Board converts its Unfunded Approval to an Apportionment, the District will have 7590 days to submit a completed Form SAB 50-05 that meets all of the existing requirements. Projects that fail to meet this deadline shall be rescinded with no further Board action. ~~A rescinded application will not revert to an Unfunded Approval. If after rescission, the District wishes to re-apply, its project must meet all of the submittal requirements in effect at the time of re-submittal. It will then be given a new place in line based on the application received date and unfunded approval date. A rescinded application will revert back to an Unfunded Approval at the bottom of the unfunded list and cannot be guaranteed bonding authority. The new Unfunded Approval date will be November 2, 2010.~~
6. Rescinded amounts shall be available for any other School ~~Facilities~~Facility Program project apportionments by the Board using the traditional first in first out method, unless otherwise specified by the Board.

ATTACHMENT B  
PROPOSED AMENDMENTS TO THE  
SCHOOL FACILITY PROGRAM REGULATIONS  
State Allocation Board Meeting, May 26, 2010

(Rev. 1)

To Renumber Section 1859.90.1 as 1859.90.2

Section 1859.90.12. Local Bond Reimbursement Fund Releases.

When a school district uses local bond funds....

.....

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63 and 17072.35, Education Code.

To Adopt Regulation Section 1859.90.1

Section 1859.90.1. Priority Funding Round Process

The Board will establish a one-time priority funding round to distribute \$408.3 million dollars to districts who request an Apportionment during a 30 day filing period beginning May 27, 2010 and ending June 28, 2010. Any funds not apportioned as of August 25, 2010 shall remain available for any other applicable School Facilities Program project apportionments by the Board. During the priority funding round the Board will require that a district must submit the Form SAB 50-05 within 90 days of the Apportionment. Projects that apply for this priority funding round that do not submit a completed Form SAB 50-05 within 90 days shall be rescinded without further Board action. In order to be considered for an Apportionment, the district must provide a written statement signed by an authorized district representative within the 30 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 time limit on fund release; and
- I Acknowledgement that failure to submit a valid Form SAB 50-05 within the 90 day time limit will result in the rescission of the Apportionment without further Board action; and
- ~~(c) Acknowledgement that the submission of a written request to participate in this priority funding round supersedes any previously granted project time limit certifications. Any certifications made by a school district that do not apply solely to the 18 month time limit will remain valid.~~
- (d) 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" shall mean that the apportionment returns to unfunded approval status with a new Unfunded Approval date. The new Unfunded Approval date will be the next available Board date after the 75 day time limit to submit a Form SAB 50-05 has elapsed November 2, 2010. The District will not be required to re-submit the application and no further application review will be required.

This regulation section shall become inoperative December 31, 2010.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

To Amend Regulation Section 1859.129

Section 1859.129. Time Limit on Apportionment.

- (a) If the district received an apportionment for a Type I Joint-Use Project or a Type II, part of a qualifying SFP Modernization project, Joint-Use Project, the district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10.
- (b) If the district received an apportionment for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, the district:

- (1) Has one year from the date of that apportionment to submit the plans and specifications to the OPSC for the Joint-Use Project that have been approved by the DSA and the CDE (plans only), otherwise the apportionment will be rescinded without further Board action. If, upon review by the OPSC, the final Division of the State Architect approved plans create a reduction in square footage that is greater than or equal to five percent of the square footage contained in the preliminary plans, a commensurate reduction to the apportionment pursuant to Section 1859.125 shall be taken to the next available State Allocation Board meeting.
- (A) In the event the Board determines there is a fiscal emergency or crisis on the part of the State of California, the Board can make a finding that a project has an Inactive Apportionment, as defined in Regulation Section 1859.2, and that the districts' ability to submit completed plans to the DSA has been impacted, and therefore the district will no longer be able to meet the approval requirement in Education Code Section 17077.45(c). In the event the Board makes that determination and finding, the Board may suspend the 12-month period for a period not to exceed 12 months beyond the time period as required in (b)(1). Once the suspension period has concluded, each project will resume where its originating period of time was suspended. Regulation Section 1859.129(b)(1)(A) shall become inoperative January 1, 2010.
- (2) Has 18 months from the date the DSA and CDE approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action. If the district is requesting an Apportionment pursuant to Section 1859.90.1, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.
- (3) Is subject to substantial progress time limit on the apportionment as outlined in Subdivision (b) of Education Code Section 17076.10.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

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

To Amend Regulation Section 1859.197

Section 1859.197. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board pursuant to Sections 1859.195 and 1859.196 after submittal by the applicant of the Form SAB 50-05.

- (a) If an apportionment was made for a Career Technical Education Facilities Project, the applicant must submit a Form SAB 50-05 within 18 months of the Apportionment as outlined in Education Code Section 17076.10 or the apportionment shall be rescinded without further Board action.
- (b) If Career Technical Education Facilities funds were reserved for the applicant pursuant to Section 1859.193(d) of these Regulations, the applicant:
  - (1) Has one year from the date of apportionment to submit the CDE plan approval and DSA-approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action.
  - (2) Has 18 months from the date the CDE plan approval and DSA-approved plans and specifications, as needed, are submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action. If the district is requesting an apportionment pursuant to Section 1859.90.1, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.
- (c) If the applicant requires a loan for the entire matching share requirement pursuant to Section 1859.194(b) of these Regulations:
  - (1) Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, the OPSC will release ten percent of the Career Technical Education Facilities grant to the applicant within 30 calendar days of the apportionment.
  - (2) The applicant has one year from the date of apportionment to submit the CDE plan approval and DSA-approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action.
  - (3) The applicant has 18 months from the date in (c)(2) to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action.
- (d) The applicant is subject to substantial progress time limit on the apportionment as outlined in Education Code Section 17076.10(b).
- (e) In the event the Board determines there is a fiscal emergency or crisis on the part of the State of California, the Board may grant an extension not to exceed 12 months to the time limit prescribed in (b)(1) and (c)(2) above and Section 1859.193(d). Regulation Section 1859.197(e) shall become inoperative January 1, 2010.

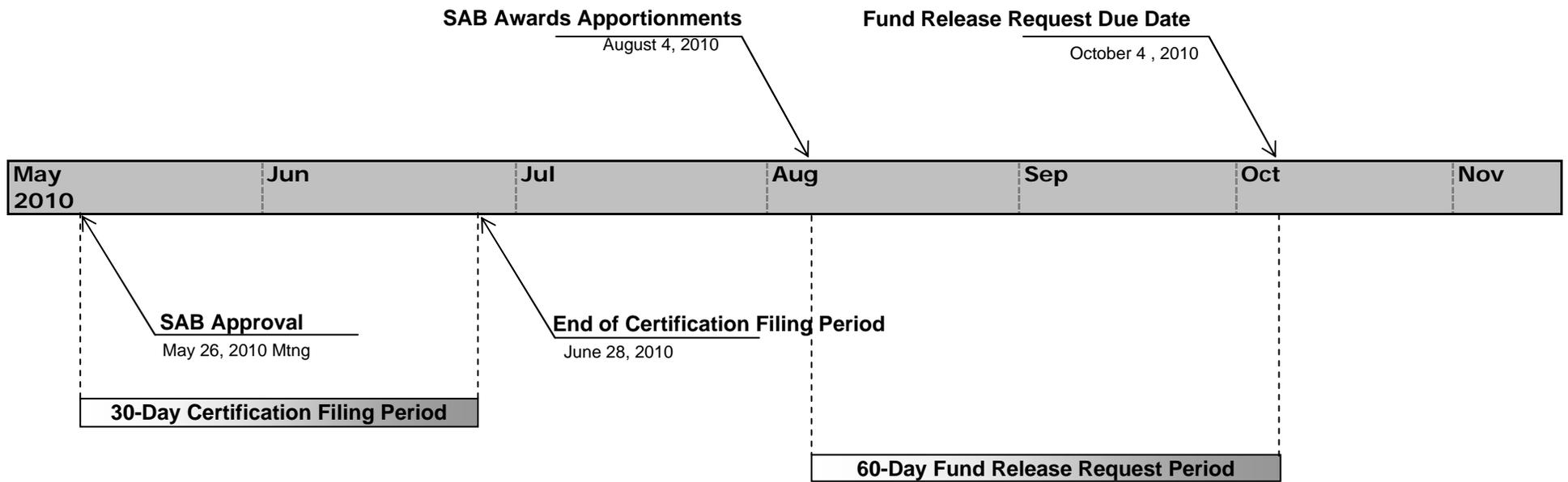
Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Sections 17078.72 and 17076.10 Education Code.

**State Allocation Board  
Subcommittee on Priority in School Construction Funding**

May 12, 2010 Meeting

**Option 3 Implementation Timeline**



**ATTACHMENT D**  
REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, April 28, 2010

**PRIORITIES IN FUNDING**

**PURPOSE OF REPORT**

To discuss the current method of providing apportionments and whether modifications are necessary to reflect the State's extraordinary financial climate.

**BACKGROUND**

Prior to December 17, 2008, the process for making apportionments and providing fund releases for the School Facility Program (SFP) was relatively uncomplicated. Fund release requests could be accommodated on a regular basis due to the ability to borrow from the Pooled Money Investment Account in advance of bond sales. However, the State's financial crisis altered the availability of cash and the normal operating process for making State Allocation Board (SAB) approvals, requiring that apportionments only be made on a direct bond funding model.

Due to the unprecedented circumstance of the State's inability to provide cash for projects that were supported by bonding authority, the SAB took multiple actions beginning in January 2009 to ensure that regulations and processes were adjusted in an attempt to minimize the impact on school district projects. These actions included:

- Emergency Regulations declaring prior apportionments inactive until cash was available;
- Creation of an Unfunded List for approved projects; and
- Prompt action to make apportionments or reactivate unfunded approvals once cash became available

Bond sales in 2009 provided \$2.627 billion to the SFP, which made it possible for the SAB to reactivate previously inactive apportionments and apportion unfunded approvals. Once an application receives an apportionment, the school districts have 18 months to submit a Fund Release Authorization (Form SAB 50-05). In order to submit a Form SAB 50-05 the district must have entered into a construction contract for at least 50 percent of the construction work included in the plans and specifications, have issued a Notice to Proceed for the project, and certify that the local matching share funds have been deposited in the County School Facility Fund, and that those funds have been expended or will be expended prior to the Notice of Completion for the project.

Despite the current availability of cash and a SAB approved apportionment, many school districts are not in a position to immediately submit a fund release request. Fund release requests have decreased from an average of approximately \$265 million per month from April through July 2009 to approximately \$38.7 million per month from August 2009 through April 1, 2010. At this rate of release, the current bond proceeds will not be completely disbursed until September 2014. Districts have indicated multiple reasons for this including the time it takes to re-start a project that has been put "on-hold" pending funding availability, unforeseen declining enrollment that calls into question the current need for the project, declining assessed valuation that restricts their ability to sell local bonds, and local political environments that make it difficult to move forward with capital outlay projects while operating budgets are being reduced.

The current practice for making apportionments is based on the date a complete application is received for processing and placed on the Unfunded List, and the availability of cash due to bond sales. With this current system, no consideration is given to whether or not the school district is actually ready or able to proceed with the construction of the project. Thus, it is possible that cash available for an apportionment could remain in an account for 18 months while local districts decide whether a project will move forward. The current approach limits the ability to prioritize school construction, stimulate the economy, or create jobs.

(Continued on Page Two)

## AUTHORITY

Education Code (EC) Section 17070.35(a) states, "In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

- (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. . . .
- (2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary. . . ."

EC Section 17076.10(d) states, "If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 or 17074.15 within a period established by the board, but not to exceed 18 months, the board shall rescind the apportionment and deny the district's application."

SFP Regulation Section 1859.90 states that "With the exception of an Inactive Apportionment, subject to Section 1859.96...., a district must submit the Form SAB 50-05 within 18 months of the Apportionment of the SFP grant for the project or the apportionment will be rescinded without further Board action...."

SFP Regulation Section 1859.93 and 1859.93.1 state that all modernization and new construction applications "shall be funded in the order of receipt of an Approved Application for funding."

Government Code Section 15503 states, "Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval."

## STAFF COMMENTS

The State of California is in a time of severe financial crisis. The policies and regulations that are currently in place do not allow the SAB to take proactive steps in assisting in the financial rebound of our State. The Office of Public School Construction (OPSC) currently uses a First In-First Out (FIFO) funding process that allows districts to submit a request for funding in the order that the apportionment was granted. This method works extremely well in a normal financial climate. Currently, however, applications that were First-In may not be ready to meet the criteria for a fund release. The applications that are ready to begin construction are the ones that will immediately help stimulate the economy. The OPSC and the SAB should consider alternatives beyond the standard parameters of the SFP in order to assist districts, taxpayers and the State.

The March 2010 bond sale provided over \$1.3 billion to the SFP. This agenda contains an item to apportion unfunded approvals using \$961 million of this amount following the current process of FIFO, regardless of bond source. The balance of approximately \$415 million provides an opportunity for the SAB to review its current funding practices to facilitate school construction projects and stimulate our State's economy through the creation of a pilot program to prioritize construction-ready projects.

It should be noted that under the options listed below, the SAB would need to give special consideration to Financial Hardship Districts and possibly those projects with Preliminary Apportionments. In most cases, these projects may not be able to move forward as the State covers 100 percent of the project costs. Failing to make special considerations for these projects would put the applicants at an unfair disadvantage. The SAB may also give special consideration to projects with health and safety issues. These projects have demonstrated an urgent need to remedy serious facility deficiencies.

(Continued on Page Three)

## OPTIONS

### **Option 1 – Taken no Action: Continue to Make Apportionments Sequentially from the Unfunded List**

This option upholds the current process of making apportionments (equal to, but not in excess of, the amount of bond funding available). As bond funds become available, the SAB will make apportionments directly from the unfunded list.

#### Pros

- Maintains consistency in program practices
- Fulfills expectations for funding order which may assist school districts with construction planning

#### Cons

- Does not prioritize projects that are ready to construct
- Apportioned funds could be unused for up to 18 months from the date of the apportionment
- Accrued apportionments not released may jeopardize future bond sales

### **Option 2 – Award Conditional Apportionments to All Projects on the Unfunded List**

The SAB would grant conditional apportionments to all projects currently on the unfunded list. All subsequent Approved Applications will also be given conditional apportionments up to the bonding authority. By granting apportionments to all projects on the unfunded list and all subsequent Approved Applications, more projects will be able to submit fund release requests and ultimately increase the possibility of cash flowing out of the program. However, the State could potentially award more apportionments than available cash to back the apportionments. The apportionments will need to include certain conditions in order to absolve the State from liability when cash is unavailable. The conditional apportionments will activate the 18-month time limit on apportionment requirement for all projects receiving such apportionments. The OPSC will only accept fund release requests up to the amount of cash available. Once the available funds have been exhausted, the 18-month clock will again be frozen for projects that have not submitted a fund release request.

Legal counsel has suggested that the following language be used with the “conditional or tentative apportionments”. “Although the State Allocation Board has provided the project with a “conditional/tentative apportionment”, such apportionment is different from a normal or unqualified “apportionment” in that a “conditional/tentative” apportionment does not in any way assure, guarantee, or promise that full funding does or will exist for the project. A “conditional/tentative apportionment” will commence the 18-month time limit requirement under EC Section 17076.10(d) for all projects receiving such “conditional/tentative apportionment” and to the extent that funds are available, will allow for the funding of the project. If however, a sufficient number of projects have requested fund releases so that the bond funding available has been exhausted, any fund releases associated with “conditional/tentative apportionments” shall be null and void. The school district (applicant) specifically understands and acknowledges that the conditional/tentative apportionments are not a guarantee, assurance or promise that funds are going to be available, and the school district agrees that the State of California and any of its entities or departments shall have no liability, whatsoever, for the lack of such funds. “

#### Pros

- All projects on the unfunded list will receive a conditional apportionment
- All projects ready to submit a fund release request will be able to compete for available funds
- This could expedite the number and amount of fund release requests from school districts.

(Continued on Page Four)

## OPTIONS (cont.)

- The conditional language recommended above could provide a mechanism to ensure that the State limits its liability to the amount of bond authority available.
- The re-activation of time limit for fund release will force school districts that are uncertain about proceeding with certain projects to rescind the apportionments thereby increasing available bond authority to commit to new applications for funding

### Cons

- There is no certainty on the frequency or amounts of bond sales
- Many projects could have inactive apportionments for extended periods of time
- School districts will assume all risks and costs when moving forward with projects and acquiring loans to cover the State share of the project

### **Option 3 – Prioritize Apportionments to Projects that are Ready to Submit Fund Releases**

The current process requires districts to obtain an apportionment before they can submit a fund release request. This option would change the order to require districts to submit a “preliminary” fund release request before an apportionment is granted. The preliminary fund release will require districts to certify that they will submit a full fund release request within 60 days after an apportionment. The objective is to only make apportionments to projects that will be able to submit a fund release request within a specified time after an apportionment.

All projects on the unfunded list will have the opportunity to submit a preliminary fund release request. The OPSC will only accept fund release requests up to the amount of cash available.

### Pros

- All districts will have an opportunity to submit a preliminary fund release request if they are ready to construct
- Districts that cannot certify that a preliminary fund release request can be submitted within 60 days of apportionment will remain on the unfunded list
- Apportionments will be awarded in date order at each SAB meeting. This may be critical if there is insufficient cash during any given month to cover all apportionments. Staff will present each month all of the projects that submitted a fund release request within a certain date and then list them in order based on the unfunded approval date

### Cons

- This option may require regulation changes, thus delaying implementation of this funding method
- Due to delayed implementation, this option will not immediately stimulate the economy
- School districts will still assume all risks and costs when moving forward with projects and acquiring loans to cover the State share of the project if the State runs out of cash before the preliminary fund release request is made

## BOARD ACTION

In considering this Item, the Board adopted Option #3 as a “pilot” program for the \$415 million and requested staff to collect data and report back on how many projects dropped back or moved up and why the projects got dropped. Assembly Member Fuller suggested that the motion be modified to default to Option #2 should regulatory changes be necessary. The Chair established a sub-committee consisting of Mr. Harvey, Ms. Moore, and the Chair in order to listen to concerns (i.e., small school district issues, financial/facility hardship project issues, the number of days to submit a fund release whether it be 60, 75 or 90 days) and to discuss possible policy changes and/or potential regulatory changes.