

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 25, 2009

TRANSFER OF CRITICALLY OVERCROWDED SCHOOLS PROGRAM FUNDS

PURPOSE OF REPORT

To request to transfer available funds from the Proposition 47, 2002 Unrestricted Critically Overcrowded School (COS) Facilities Fund, to be used for School Facility Program (SFP) New Construction purposes.

DESCRIPTION

Qualifying school districts received COS preliminary apportionments in 2002 under Proposition 47. These districts had four years, or five years with an approved one-year extension provided by the State Allocation Board (SAB), to convert their COS projects to final apportionments. Upon final reconciliation of all COS project conversions, any funds remaining in the Unrestricted COS Fund shall be transferred to the SFP New Construction Fund.

AUTHORITY

Education Code Section 17078.30 outlines how the funds shall be identified within and transferred out of the COS Facilities Funds. It also provides that available funds beyond those reserved for preliminary apportionments shall be transferred to the SFP New Construction Fund and may be available to the Board for apportionments for any new construction purpose.

Regulation Section 1859.154(c) in part states that any funds remaining in the 2002 COS Fund not needed for purposes of converting projects shall be transferred to the SFP New Construction Fund.

Labor Code Section 1771.7(a)(1) in part states that public works projects using funds derived from the Public Education Bond Act of 2002 shall initiate and enforce or contract with a third party to initiate and enforce a labor compliance program.

STAFF COMMENTS

There is approximately \$840.7 million in the 2002 Unrestricted COS Facilities Fund. Staff has conducted the final reconciliation of all 2002 COS projects under Proposition 47 that have converted to final apportionments. However, since these projects have not been closed-out or audited, Staff is unable to determine if the funds are not needed at this time. Based upon the Board's directions at the March 11, 2009 SAB meeting, Staff recommends transferring \$700 million from the 2002 Unrestricted COS Facilities Fund to the SFP New Construction Fund at this time. Staff will prepare an item for the June 2009 SAB meeting to discuss the remaining balance of \$140.7 million.

Districts need to be aware that all new construction projects funded from these funds are subject to Labor Compliance provisions. Districts will need to take the appropriate measures to ensure their SFP New Construction projects meet all the criteria as described in the Labor Code Section referenced above.

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STAFF COMMENTS (cont.)

Staff is concerned that school districts have already commenced construction on their SFP projects expecting to be apportioned from Proposition 1D and may not have enforced a Labor Compliance Program (LCP) on their projects. By having Proposition 47 funds available, the OPSC will have to apportion projects from the oldest bond funds first to avoid federal arbitrage penalties. Any funds received from Proposition 47 subject the entire project to LCP requirements. The transfer and funding of projects from these funds could jeopardize these school district projects if they did not have a LCP in effect at the time the school district proceeded with construction. An audit of the projects could result in rescission of the State apportionment if it is determined that the project received Proposition 47 funding and did not enforce a LCP.

In order to minimize the impact to school districts, Staff will transfer \$700 million from the 2002 Unrestricted COS Fund to the SFP New Construction Fund only after all prior authorized bonds have been apportioned. Staff will notify all potentially impacted school districts that withdrawal of their *Application for Funding* may be necessary if they have started work on a project without a LCP in place and cannot receive Proposition 1D funding. Additionally, Staff will notify all school districts that additional Proposition 47 funding is available and will require the enforcement of a LCP should school districts choose to apply for funding.

RECOMMENDATIONS

1. Authorize the transfer of \$700 million from the 2002 Unrestricted COS Fund to the SFP New Construction Fund on an as needed basis to utilize the funds for district projects.
2. Authorize a reserve of \$140.7 million in the 2002 Unrestricted COS Fund for three months and direct Staff to prepare an item for the June 2009 SAB meeting to discuss potential options for the \$140.7 million remaining in the 2002 Unrestricted COS Fund.
3. Request Staff to forewarn school districts that SFP funding applications pending SAB approval may receive an apportionment from either Proposition 47 or 55, and therefore, in order to protect the potential to receive SFP funding, the districts should carefully consider initiating and enforcing a Labor Compliance Program approved by the Department of Industrial Relations for those SFP projects.