REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 24, 2011

SCHOOL DISTRICT DATA	
School District: .....LOS ANGELES UNIFIED	County:.....LOS ANGELES
Application Number:.....53/64733-00-420	School Name:……SOUTH REGION HIGH #9
Total District Enrollment:.....667,273	Project Grade Level:……9-12
Financial Hardship:.....NO	

PURPOSE OF REPORT

To request that the State Allocation Board (Board) make a finding that unforeseen circumstances exist with the site acquisition for the Los Angeles Unified School District's (District) South Region High School #9 (site), and that the New Construction Additional Grant for Hazardous Waste Removal meets the Board's criteria for unfunded approval.

DESCRIPTION

School Facility Program (SFP) Regulations limits funding that may be provided for allowable costs of hazardous materials/waste removal and/or remediation costs up to 150 percent of the appraised site value according to SFP Regulation Section 1859.74.1. The limit may be exceeded with Board approval. This site's value is $36,760,516. Therefore, 150 percent of the site value is $55,140,774, which is the maximum hazardous materials/waste removal and/or remediation cost allowed without special Board approval. However, due to unforeseen circumstances, the District is requesting that the Board approve a total of $82,000,000 hazardous materials/waste removal costs of the site, which exceeds the cap by $26,859,226. The 50 percent State share of the excess costs is $13,429,613.

AUTHORITY

SFP Regulation Section 1859.74.2 states:

"With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable site costs shall not exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2)....

(a) The costs associated with the site acquisition and to implement the [Response Action] (RA) as determined necessary in the [Preliminary Environmental Assessment] (PEA)
that has been approved by the Department of Toxic Substances Control (DTSC) subject to the following:
(1) The costs for preparation of the RA.
(2) The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.
…
(d) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (a), (a)(1), and (a)(2) may be exceeded when the Board finds that unforeseen circumstances exist, and when both of the following exist:
(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.
(2) Substantiation that the costs are limited to the minimum required to complete the evaluation and RA approved by the DTSC."

(Continued on Page Two)

BACKGROUND

The 35.2 acre site originally consisting of 35 parcels is currently owned by the District. Historically, the site has been used for industrial and commercial operations including metal manufacturing, auto repair, chemical mixing, and pesticide formulation and testing. The site was originally planned to contain an elementary school and high school. Various remediation cost estimates have been developed for the site, with the earliest remediation estimates prepared in 1990 ($3.5 to $5.1 million) based on very limited site investigation data. A subsequent site investigation in 1997 resulted in remediation cost estimates totaling $4.6 million. Based on that limited data, only certain parcels were determined to have required cleanup, and only very limited groundwater cleanup was assumed in these costs. Furthermore, the former Universal Cast Iron Company property (Parcel 22) was excluded from the 1997 evaluation. More recent investigations have identified significant soil, gas and groundwater contamination on this parcel.

Subsequent DTSC involvement indicated these 1997 remediation estimates did not conform to DTSC standards. On May 20, 2003, the DTSC filed an imminent and substantial endangerment determination which stated that four of the site properties "pose an imminent and substantial endangerment to human health and the environment." In response to these issues, the District embarked on a comprehensive site characterization process under DTSC oversight. This process involves identifying past and present land use, topography, hydrogeology (groundwater), surrounding land use, and chemicals of potential concern. Recent investigations have identified significant soil, soil-gas, and groundwater contamination that were previously undetected.

The chemicals of potential concern identified by a baseline human health risk assessment included volatile organic compounds (VOCs), semi-volatile organic compounds, polychlorinated biphenyls (PCBs) and metals. These and other chemicals have proven to be in significantly higher concentrations than originally estimated in the Removal/Remedial Action Work plans previously completed. Various remediation cost estimates have been prepared and refined over time as additional site characterization data were collected, thus resulting in the unforeseen circumstances.

Although not all-inclusive, some specific examples of unforeseen circumstances are provided (See Attachment A "Summary of Remediation Cost Estimates" for additional detail.):

1. Soil Contamination – Subsequent soil investigations conducted between 2005 and 2009, including a comprehensive soil Remedial Investigation (RI) work plan, identified numerous areas of soil contamination that previous investigations had not defined due to their limited nature. For example, the volume of soil requiring removal in the RI work plan is estimated to be 42,000 cubic yards based on the current Remedial Action Plan (RAP), as approved by DTSC on June 15, 2010. This volume of soil removal is the equivalent of 8.6 acres, one foot deep, significantly surpassing original estimates.

2. Soil-gas – Site-wide soil-gas investigations performed under DTSC oversight determined that various areas of the site contained soil-gas VOCs at levels that would require cleanup. Previous site characterization efforts only collected limited soil-gas data and the cleanup estimates did not evaluate the costs associated with mitigating vapor intrusion threats to future school structures.

3. Groundwater Contamination – A significant groundwater contamination threat has been identified over time. A site-wide Groundwater Monitoring Plan was prepared and submitted to the DTSC in 2003. Groundwater investigation work, which was performed in four primary phases between 2004 and 2008, identified a number of groundwater contaminant plumes that require significant cleanup. Early investigations did not identify these issues.

(Continued on Page Three)

BACKGROUND (cont.)

As discussed above, various remediation cost estimates have been prepared and refined for the site over time as additional site characterization data were collected. The collection of insufficient site characterization data and the subsequent identification of additional soil, soil-gas, and groundwater contamination issues at the site have resulted in an increase in the remediation cost estimates compared to earlier estimates.

STAFF COMMENTS

The following three requirements must be met to exceed the limitation of 50 percent of one and one half times the value of an appraisal for costs pursuant to SFP Regulation Section 1859.74.2(d):

A. The Board must find that unforeseen circumstances exist. Such circumstances are described in the Background section above.

B. The California Department of Education (CDE) must determine that the site is the best available site for meeting the educational and safety needs of the School District. In a letter to the District dated November 19, 2008, the CDE determines that based on the information provided by the District, the site proposed for acquisition/use is the "best available alternative site" (Attachment B).

C. The costs are limited to the minimum required to complete the evaluation and RAPs approved by the DTSC. All investigative costs are limited to the actions DTSC requires to characterize the site. Once the characterizations have been completed, DTSC requires risk assessments to determine the appropriate screening and cleanup levels. The input parameters used in developing soil, soil-gas, and groundwater cleanup levels in the RAPs are defined in conjunction with the DTSC; therefore, the mitigation measures as defined in the RAPs represent the minimum amount of cleanup work that is required by DTSC.

Without special Board approval, the maximum hazardous materials/waste removal and/or remediation costs are limited to the 150 percent of the value of the site according to SFP Regulation Section 1859.74.1, which is $55,140,774. Due to unforeseen circumstances, the District is requesting a total of $82,000,000 for hazardous materials/waste removal costs, which exceeds the cap by $26,859,226 (50% State Share $13,429,613). The additional costs require Board approval. Staff supports the District's request to exceed the 150 percent cap for site acquisition costs related to hazardous materials/waste and /or remediation.

100% Site Cost		150% Cap		Maximum Hazardous Waste Costs (without special approval)
$36,760,516	x	150%	=	$55,140,774

100% Hazardous Waste Costs Requested		Maximum Hazardous Waste Costs (without special approval)		Excess Hazardous Waste (100%)	State Share (50%) Excess Hazardous Waste
$82,000,000	–	$55,140,774	=	$26,859,226	$13,429,613

RECOMMENDATIONS

1. Make a finding that unforeseen circumstances exist at the site for the District's South Region High School #9 related to the hazardous materials/waste removal and/or remediation.

2. Approve the District's request for an unfunded approval for project 53/64733-00-420 including the additional amount of $13,429,613 (50 percent State share) for excess hazardous materials/waste removal and/or remediation costs in Attachment C.

BOARD ACTION

In considering this Item, the State Allocation Board (SAB) approved this item with the Consent portion of the agenda. The SAB approved the staff's recommendations, which the SAB: 1) made a finding that unforeseen circumstances existed at the site for the District's South Region High School #9 related to the hazardous materials/waste removal and/or remediation; and 2) approved the District's request for an unfunded approval for Project No. 53/64733-00-420, including the additional amount of $13,429,316 (50 percent State share) for excess hazardous materials/waste removal and/or remediation costs.

ATTACHMENT A

Table 1
Summary of Remediation Cost Estimates

Area	1997 Ninyo & Moore Cost Estimate [1]	2005 Site-Wide Planning Estimate [2]	2008-2010 RAP/RAW Cost Estimate [3]
Already Incurred Costs	-	-	$8,400,000
OU 1 (Soil and Soil Gas North of Tweedy)	$1,751,000	$9,700,000	$12,300,000
OU 2 (Soil and Soil Gas South of Tweedy)	$2,898,000	$27,000,000	$25,500,000
OU 3 (Site-Wide Groundwater)[5]	$0	$45,000,000	$33,000,000
OU 4 (Future Street) [4]	-	-	$1,900,000
Total	$4,649,000	$81,700,000	$81,100,000

Notes:

[1] Ninyo and Moore (1997a and b) cost estimates only considered soil cleanup at select parcels and limited groundwater treatment at Parcel 1. Other groundwater plumes and impacted soil/soil-gas were not addressed.

[2] Planning Estimate Costs (Parsons, 2005c) based on the upper-bound unrestricted use.

[3] Based on the OU 1 RAP (Parsons, 2008d), OU 2 RAP (Parsons, 2009a), OU 4 RAW (Parsons, 2011a), and OU 3 Engineering Estimate.

[4] OU 4 did not exist at the time of the 1997 Ninyo and Moore and 2005 Planning Estimates were performed. Costs are addressed under OU 2.

[5] A RAP has not yet been prepared for OU 3. Cleanup costs are based on an engineering estimate.

ATTACHMENT B

CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

August 12, 2011

Barbara Kampmeinert, Acting Policy Manager
Office of Public School Construction
P.O. Box 980610
West Sacramento, CA 95798-0610

Subject: Los Angeles Unified School District's South Region High School #9

Dear Ms. Kampmeinert,

The Los Angeles Unified School District's (LAUSD) South Region High School #9 (SRHS#9) is under construction on a 35 acre site located at Tweedy Boulevard and Adella Avenue in the City of Southgate. The California Department of Education (CDE) issued a Contingent Site Approval on September 29, 2006 and a Final Site Approval on October 27, 2009.

The eligible state funding cost of the Department of Toxic Substances Control required remediation of environmental hazards will exceed the cap of 150% of the site's appraised value, and the district is requesting additional funding pursuant to SAB Regulation 1859.74.2.d. As required by this regulation, the CDE has determined that the site is the best available site for meeting the educational and safety needs of the district's students. This determination is based on the following:

1. The school is located so as to relieve overcrowding at Bell High, Huntington Park, and South Gate High Schools. These schools are required by the *Williams* settlement to be off of the Concept 6 calendar by 2012;
2. *California Code of Regulations*, Title 5 requirements have been met and ensure student safety, and
3. The 35 acre site is of sufficient size and shape to allow the construction of a complete facility capable of implementing the district's adopted educational specification.

If you have questions or need additional information, please contact me at 916-327-7148 or fyeager@cde.ca.gov

Sincerely,

Fred Yeager, Assistant Director
School Facilities Planning Division

FY:kr

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

SAB Meeting: **August 24, 2011** **New Construction - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 53/64733-00-420
School District: Los Angeles Unified
County: Los Angeles
School Name: South Region High #9

PROJECT DATA

	High School
K-6:	
7-8:	
9-12:	1458
Non-Severe:	
Severe:	
Application Filing Basis:	District Wide
Number of Classrooms:	54
Master Acres:	40.7
Existing Acres:	
Proposed Acres:	31.36
Recommended Acres:	40.7
Facility Hardship (a):	No
Financial Hardship Requested:	No
Alternative Education School:	No

ADJUSTED GRANT DATA

New Construction Grant	$ 17,875,080.00
Fire Detection Alarm	34,992.00
Sprinkler System	275,562.00
Labor Compliance	120,113.00
High Performance (3.31%)	591,665.00
Site Acquisition	63,367,576.00
Service Site	6,267,095.00
Off-Site	212,963.00
Utilities	174,637.00
General Site	1,146,340.00
Total State Share (50%)	90,066,023.00
District Share (50%)	90,066,023.00
Total Project Cost	$ **180,132,046.00**

PROJECT FINANCING

State Share
Critically Overcrowded School Facility Program

53/64733-00-420	$	3,815,294.00
53/64733-00-467	$	8,235,577.00
53/64733-00-469	$	8,235,577.00
53/64733-00-475	$	8,235,577.00
53/64733-00-503	$	4,985,030.00
53/64733-00-510	$	4,985,030.00
53/64733-00-527	$	9,970,069.00
53/64733-00-573	$	4,061,539.00
53/64733-00-577	$	4,061,539.00
53/64733-00-578	$	4,061,539.00
53/64733-00-579	$	4,061,539.00
53/64733-00-584	$	3,628,255.00
53/64733-00-614	$	8,123,083.00
53/64733-00-754	$	3,741,076.00
53/64733-00-759	$	5,256,063.00
53/64733-00-765	$	10,512,134.00
53/64733-00-771	$	10,512,134.00
53/64733-00-784	$	5,256,063.00
Subtotal		111,737,118.00
This Project	$	(21,671,095.00)
50/64733-00-141	$	(10,479,685.00)

District Share

Cash Contribution	90,066,023.00
Total Project Cost	$ **180,132,046.00**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Preliminary Apportionment	Preliminary Apportionment This Action	Authorized This Action	Unfunded Approval This Action
State Share						
New Construction/Add. Grant	**055-531**	**55**	$ 111,737,118.00	$ (111,737,118.00)	$ 15,732,307.00	
New Construction/Add. Grant	**955-531**	**55**			63,262,366.00	$ 63,262,366.00
New Construction/Add. Grant	**055-500**	**55**			10,479,685.00	
High Performance	**957-700**	**1D**			591,665.00	591,665.00
District Share						
Cash Contribution					90,066,023.00	
Total			$ **111,737,118.00**	$ **(111,737,118.00)**	$ **180,132,046.00**	$ **63,854,031.00**

Funding Sources: Proposition 55 Bonds/2004-Mar.; Proposition 1D Bonds/2006-Nov.
Pursuant to the Board's action on March 11, 2009, this application has been approved and placed on the Unfunded List.

This approval does not constitute a guarantee or commitment of future State funding.

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

The District has certified it is enforcing a Labor Compliance Program (LCP). Please be advised this project has been apportioned with funds that require a LCP pursuant to Labor Code Section 1771.7.

The District was approved for $16,862,009 (50 percent State Share) for environmental hardship pursuant to School Facility Program Regulation Section 1859.153(c). The remaining $1,129,702 has not been released and is part of the unfunded amount of $63,262,366 under Authorized This Action.

$10,479,685 of environmental hardship funding was released for South Region Middle School #4, 50/64733-00-141. The former middle school project has been rescinded, and the environmental hardship funds are now part of this approval for South Region High School #9 because it encompasses the entire site of the former middle school project.

Due to the rescission of SFP Project Number 50/64733-00-141, the original pupil grants of 513 will be reduced by 342 pupil grants. Therefore, 171 K-6 pupils will be returned to the District's new construction eligibility baseline.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 24, 2011

SCHOOL DISTRICT DATA	
School District: ...SAN JOAQUIN COUNTY OFFICE OF EDUCATION	County: ..... SAN JOAQUIN
Application Number(s): 50/10397-00-000	School Name(s):..... VARIOUS
Total District Enrollment:.....3,227	Project Grade Level: …….VARIOUS
Financial Hardship:……..……..……..……..YES	
Last Approved Local Bond Measure:……..……None	

PURPOSE OF REPORT

To clarify whether the San Joaquin County Office of Education's (County Office) Financial Hardship savings can be applied to its Material Inaccuracy penalty.

DESCRIPTION

This is to clarify whether $79,529 of the County Office's Financial Hardship savings can be applied to its $257,652 Material Inaccuracy penalty, staff is providing an explanation of how the County Office's Financial Hardship savings were calculated. Additionally, the related statutes and School Facility Program (SFP) Regulations are discussed.

AUTHORITY

Material Inaccuracy Penalties
Education Code (EC) Section 17070.51(b) states that, "The board shall impose the following penalties if an apportionment and fund release has been made based upon information in the project application or related materials that constitutes a material inaccuracy."

EC Section 17070.51(b)(1) states that, "Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board…an amount proportionate to the additional funding received as a result of the material inaccuracy including interest."

Financial Hardship Savings
SFP Regulation Section 1859.103 states that, "the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project."

BACKGROUND

Prior Board Actions
Consistent with past State Allocation Board (Board) actions, Financial Hardship savings have been returned in addition to Material Inaccuracy penalties. At the May 23, 2007 Board meeting, the Board found that the Clay Joint Elementary School District (District) had a Material Inaccuracy, and the Board assessed a statutory interest penalty. Similar to the County Office, the District had both a statutory Material Inaccuracy interest penalty and Financial Hardship savings. In the District's case, none of the Financial Hardship savings were applied to the Material Inaccuracy penalty.

(Continued on Page Two)

BACKGROUND (cont.)

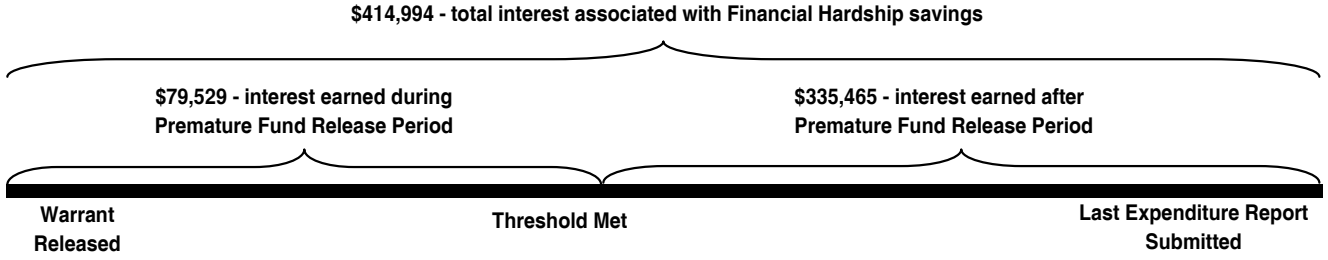
As a result of the County Office's written request and agreement to return Financial Hardship savings, the Board closed eight County Office projects and required the return of the Financial Hardship savings at its May 2011 meeting. Additionally, at its June 2011 meeting, the Board required the County Office to repay $257,652 as part of the County Office's Material Inaccuracy penalties. These two independent actions require the County Office to return the full amount of its Financial Hardship savings and the full amount of its Material Inaccuracy penalty. On seven of the eight projects in question, the County Office has fully repaid its Financial Hardship savings.

STAFF ANALYSIS/STATEMENTS

Financial Hardship Savings Calculation
To demonstrate how the County Office's Financial Hardship savings were calculated, refer to the formula below. For more detail, Attachment A provides project-specific calculations.

State Grant plus **District Match** plus **Interest Earned** less **Eligible Project Expenditures** equals **Financial Hardship Savings**

Financial Hardship Savings (Interest Earned portion)
As noted in the formula above, for any Financial Hardship project, interest earned is considered part of the total Financial Hardship savings. While in the County Office's possession, the State's bond funds earned $414,994 in interest, of which $79,529 was attributed to interest accrued during the premature fund release period (the time period between the false certification dates and the dates the County Office actually met the fund release requirements). See Attachment B for the County Office's calculations.



Use of Financial Hardship Savings
At its meeting on May 25, 2011, the Board closed these projects and required the return of Financial Hardship savings. Per SFP Regulation Section 1859.103, the County Office, and all Financial Hardship districts may choose one of two options regarding their Financial Hardship savings:

1. Return the Financial Hardship savings to the State to reduce the Financial Hardship contribution on the project.
2. Retain the project savings to reduce the State's Financial Hardship contribution on a future project in the next three years. After the three year timeline, any savings remaining, including additional interest earned, must be returned to the State.

In this case, the County Office chose Option 1 for seven of eight projects, and a combination of Option 1 and 2 for the eighth project. As a result of both of these two options, the return of Financial Hardship savings allows for an equivalent reduction in the State apportionment. If the County Office is allowed to apply some of or its entire Financial Hardship savings to its Material Inaccuracy penalty, the State apportionment would not be reduced by the appropriate

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

amount required in SFP Regulations. No other options for the use of Financial Hardship savings exist in statute or SFP Regulations. Therefore, there is no provision in regulation that allows Financial Hardship savings to apply to a Material Inaccuracy penalty.

Material Inaccuracy Penalties
The full amount ($257,652) of the Material Inaccuracy penalty was approved at the June 22, 2011 Board meeting. The Material Inaccuracy statutory interest penalty is required by EC Section 17070.51(b)(1). There is no provision in law that allows the Board to offset, reduce, or change the statutory interest penalty amount. The return of Financial Hardship savings (required by SFP Regulation Section 1859.103), is a separate and distinct requirement and cannot be applied to the penalty.

RECOMMENDATION

Take no action (this would affirm that the County Office is not permitted to apply any of its Financial Hardship savings to its Material Inaccuracy penalty)

BOARD ACTION

In considering this Item, a motion to review in light of the Attorney General's opinion, the issue that has been referred to as the double dip for both the San Joaquin County Office of Education (COE) and the prior school district (Clay Joint) and bring it back to the SAB for action, was made, seconded, and it failed. As a result of that outcome, staff's recommendation was upheld which was to take no action (this would affirm that the San Joaquin COE is not permitted to apply any of its Financial Hardship savings to its Material Inaccuracy penalty).

ATTACHMENT A

San Joaquin County Office of Education
SCHOOL FACILITY PROGRAM
State Allocation Board Meeting, August 24, 2011

Application No.	State Grant	District Match	Interest Earned	Eligible Project Expenditures	Savings
50/10397-00-007	$ 3,125,309	$ -	$ 33,958	$ 3,126,369	$ 32,898
50/10397-00-008	$ 3,159,227	$ -	$ 70,200	$ 3,150,244	$ 79,183
50/10397-00-012	$ 3,115,240	$ -	$ 62,867	$ 2,992,714	$ 185,393
50/10397-00-014	$ 3,075,269	$ -	$ 44,436	$ 3,071,441	$ 48,264
50/10397-00-015	$ 3,129,413	$ -	$ 74,612	$ 2,930,275	$ 273,750*
50/10397-00-017	$ 3,415,136	$ -	$ 38,296	$ 3,405,701	$ 47,731
57/10397-00-001	$ 915,602	$ -	$ 25,389	$ 915,081	$ 25,910
57/10397-00-004	$ 1,843,011	$ -	$ 65,236	$ 1,842,320	$ 65,927
Grand Total	**$21,778,207**	**$ -**	**$ 414,994**	**$21,434,145**	**$ 759,056**

*will be reduced by $252,318 – this amount will be contributed to another Financial Hardship project

ATTACHMENT B

San Joaquin County Office of Education
SCHOOL FACILITY PROGRAM
State Allocation Board Meeting, August 24, 2011

Fund 35 Project Revenue Received and Interest Earned

San Joaquin County Office of Education ~ REVISED November 16, 2010

Col. A Application Project #	Col. B Site	Col. C OPSC Fund Release Signed Date	Col. D SJCOE Date Received	Col. E Cash Transfer Amount	Col. F Four Quarters Interest (Various Fiscal Yrs)	Col. G Days Difference	Col. H # Annual Days	Col. I % of Days (Col. F / Col. G)	Col. J Prorated Interest (Col. E * Col. H)
50/10397-00-007	Columbia/Yale - Stockton	08/08/02	9/9/2002	$840,464	$20,232.29	223	365	0.6110	$12,361.10
50/10397-00-007	Columbia/Yale - Stockton	12/20/2002	2/12/2003	$1,097,072	$18,143.03	67	365	0.1836	$3,330.36
50/10397-00-008	Kettleman Community	03/25/2003	4/30/2003	$2,302,475	$20,200.95	146	365	0.4000	$8,080.38
50/10397-00-012	Hammer Lane Community	08/08/2002	1/16/2003	$2,823,572	$22,813.35	95	365	0.2603	$5,937.72
50/10397-00-014	Lathrop Louise/Harlan Community	03/25/2003	4/30/2003	$2,227,374	$21,639.04	146	365	0.4000	$8,655.62
50/10397-00-015	Bianchi Community	1/16/2003	1/16/2003	$2,435,992	$20,125.38	95	365	0.2603	$5,238.11
50/10397-00-017	Tracy Community	4/30/2003	4/30/2003	$2,230,562	$21,400.45	146	365	0.4000	$8,560.18
50/10397-00-001	McFall Elementary	6/2/2004	6/2/2004	$847,712	$13,801.72	237	365	0.6493	$8,961.66
50/10397-00-004	Redwood High	6/2/2004	6/2/2004	$1,623,004	$28,343.24	237	365	0.6493	$18,403.69
			Grand Totals	**$16,428,227**	**$186,699.45**	**1,392**			**$79,528.83**

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 24, 2011

DISBURSAL OF BOND SALE PROCEEDS UNUSED BY THE CHARTER SCHOOL FACILITIES PROGRAM

PURPOSE OF REPORT

To present options for the disbursal of unused bond sale proceeds within the Charter School Facilities Program (CSFP).

DESCRIPTION

Approximately $28.9 million in bond sale proceeds made available by the Board for purposes of providing advance fund releases for design and/or site acquisition to qualified CSFP projects remains unused at the conclusion of the two CSFP advance fund release filing rounds. Staff is seeking direction on how to disburse the funds.

AUTHORITY

Education Code 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…."

BACKGROUND

The Board has made bond sale proceeds available at various points in the past year for advance fund release requests for those with a Preliminary Charter School Apportionment. The following is a brief timeline of Board decisions:

- 8/25/10 – The Board made $10 million available for CSFP advance fund release requests.
- 10/6/10 – The Board approved a 30-day filing period and a lottery among the applicants as the method to determine who would receive the funds. Requests at the close of the 30-day filing period totaled $56 million.
- 12/15/10 – The Board made an additional $46 million available to honor all requests from the filing period.
- 12/15/10 – The Board also made an additional $50 million available to be disbursed via a second advance fund release-filing period.
- 5/25/11 – The Board approved the reservation of $73.5 million from future bond sale proceeds to cover remaining advances.

The charter schools that participated in the first filing round were given a deadline of April 18, 2011 to submit a valid *Fund Release Authorization* (Form SAB 50-05). Of the $56 million made available, $41.8 million in valid fund release requests were submitted, leaving approximately $14.2 million in bond sale proceeds unused.

The charter schools that participated in the second filing round were given a deadline of July 6, 2011 to submit a valid Form SAB 50-05. Of the $50.0 million available for the second filing round, $35.3 million in valid fund release requests were submitted, leaving an additional $14.7 million in bond sale proceeds unused. Valid requests submitted for both rounds totaled $77.1 million. The total amount of unused bond sale proceeds for both rounds is $28.9 million, all of which is from Proposition 1D.

	1st Advance Fund Release Round (in millions)	**2nd Advance Fund Release Round (in millions)**	**Total (in millions)**
Amount Available	**$56.0**	**$50.0**	**$106.0**
Valid Requests Submitted	**$41.8**	**$35.3**	**$77.1**
Cash Remaining Unused	**$14.2**	**$14.7**	**$28.9**

(Continued on Page Two)

STAFF ANALYSIS/STATEMENTS

Since the deadlines for any charter school to request these bond sale proceeds have expired, the Board can disburse the $28.9 million at its discretion. In doing so, the Board may wish to consider other circumstances relating to the CSFP. All outstanding CSFP advance fund releases have been placed on the unfunded approvals list by order of the Preliminary Apportionment date. At its May 2011 meeting, the Board approved a set aside of $73.5 million in future bond sale proceeds to meet the needs of all remaining CSFP advance fund releases on the unfunded approvals list at that time, including those who participated in the first advance fund release filing round but did not submit a valid Form SAB 50-05. Per the Board's action, the $73.5 million in future proceeds are to be made available for a six month time period during which a valid Form SAB 50-05 could be submitted for any and all CSFP advance fund releases.

The $73.5 million does not include those from the second advance fund release filing round that did not submit a valid Form SAB 50-05, as that round did not close until July 6, 2011. This figure also included estimates on un-awarded Preliminary Apportionments. After reconciling previous estimates and adding the unused second round requests, the total remaining need for CSFP advance fund release requests is $94.2 million. Depending on how the Board determines to disburse the current cash available, it may be prudent to consider setting aside additional future bond sale proceeds to meet the $20.7 million increase in advance fund release needs of the program.

Setting aside future bond sale proceeds for all CSFP projects to access their respective advance fund release(s) will place CSFP projects back on par with other SFP projects in the competition for future bond sale proceeds. This will also mean that the advance fund release process that existed prior to the fiscal crisis would again be available to CSFP participants. The Board could decide to re-activate all Preliminary Charter School Apportionments and resume the statutory timelines at the conclusion of the six-month time period without any disadvantage to the applicants.

Staff presents the following options for the disbursal of the $28.9 million in cash proceeds on hand:

Option 1 – Make the cash available for other projects on the Unfunded Approvals list through the priority funding process

Since the funding was made available to all Preliminary Charter School Apportionments and has not been requested for advance fund releases at this time, the Board could decide to use all of the proceeds to fund other SFP projects on the unfunded approvals list. At its May 2011 meeting, the Board approved regulatory changes that establish bi-annual 30 day certification filing periods during which projects on the Unfunded Approvals list (including CSFP advance fund releases) may request consideration to receive bond sale proceeds for their projects by certifying that they will submit a valid Form SAB 50-05 within 90 days of apportionment (CSFP advance fund releases for site acquisition have 180 days). Per the proposed regulations, these certifications will be valid for six months and any bond sale proceeds, rescissions, return of savings, or any other cash returning to the SFP will be used to fund projects on the list. Under this option, the $28.9 million in unused CSFP funds could be used in the same manner as rescission funds and fund the projects at the top of the list that submit a valid certification (including health an safety projects).

If the Board were to choose this option and also opted to set aside future bond sale proceeds to cover all remaining CSFP advance fund release requests in the future, a separate action to set aside $20.7 million, in addition to the already approved $73.5 million, would be required.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (continued)

Option 2 – Apply the cash towards the future set aside of bond sale proceeds for CSFP advance fund releases

At its May 2011 meeting, the Board approved the setting aside of $73.5 million in future bond sale proceeds to meet the needs of all remaining CSFP advance fund releases on the unfunded approvals list. As stated above, the actual need is $94.2 million. Since the $28.9 million had been previously reserved for the CSFP, the Board could decide to keep it reserved for the CSFP. The funds would be available to be accessed immediately by submittal of a valid Form SAB 50-05 and would be available for a period of six months on a first come-first served basis. Should the Board choose this option, it would only need to reserve $65.3 million in future bond sale proceeds to meet the remaining CSFP advance fund release need.

This option makes funding more immediately available for CSFP advance fund releases; however, these proceeds were already recently available and have gone unused to date.

Option 3 – Reserve the proceeds for CSFP construction projects

In light of the fact that the funds were originally reserved for the CSFP, there is support from some stakeholders to use the $28.9 million to fund CSFP full funding applications that are on the unfunded approvals list. There are four CSFP projects totaling $25.3 million currently on the unfunded approvals list. All four have indicated that they would be able to submit a valid Form SAB 50-05 within 90 days of apportionment. However, the bond source of the available proceeds is Proposition 1D. While the project with the earliest unfunded approval date is a Proposition 1D project and would be fully funded, the project with the second earliest unfunded approval date is a Proposition 55 project. The project would either have to be passed over to fund the third and fourth CSFP projects on the unfunded list or the project would have to be allowed to switch bond sources from Proposition 55 to Proposition 1D. Unfortunately, the CSFP has only $3.7 million in remaining Proposition 1D bonding authority, and the project's unfunded approval is approximately $7.1 million; therefore, only partial funding could be offered if the Board were to allow the bond source switch.

Allowing this option and allowing the bond source switch of the Proposition 55 project would leave a balance of approximately $6.9 million in Proposition 1D proceeds that would be available for future CSFP full funding applications. It is important to note that using the funds for these purposes, while keeping the proceeds within the CSFP, would result in passing over qualified projects from other SFP programs with earlier unfunded approval dates (including four health and safety projects totaling $1.6 million) that may be ready to submit a valid Form SAB 50-05.

RECOMMENDATIONS

1. Seek Board direction on how to disburse the $28.9 million in bond sale proceeds.
2. Based on the Board's action regarding Recommendation 1, seek Board direction as to whether to augment the previously approved set aside of $73.5 million in future bond sale proceeds by an additional $20.7 million to cover all possible future CSFP advance fund release needs.
3. Declare that all Preliminary Charter School Apportionments for which advance funding is reserved will be re-activated effective at the conclusion of the future six-month filing period (per prior Board direction this filing period will be established once additional proceeds are made available from the next bond sale).

BOARD ACTION

In considering this Item, the State Allocation Board (SAB) approved 1) staff's Option #3, which would reserve the proceeds for the CSFP construction projects and the $6.9 million would remain with the CSFP; 2) Recommendation #2, which augmented the previously approved set aside of $73.5 million in future bond sale proceeds by an additional $20.7 million, for a total of $94.2 million, to cover all possible future CSFP advance fund release needs; and 3) Recommendation #3, which declared that all Preliminary Charter School Apportionments for which advance funding has been reserved would be reactivated effective at the conclusion of the future six-month filing period (per prior SAB direction, this filing period will be established once additional proceeds are made available from the next bond sale).

THE PROJECT INFORMATION WORKSHEET
DATA HAS BEEN POSTPONED