

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 29, 2008

MATERIAL INACCURACY

PURPOSE OF REPORT

To discuss the procedures used to determine Staff's recommendations for the recovery of interest and the loss of self-certification due to Material Inaccuracy (Attachments A and B).

AUTHORITY

Material Inaccuracy is defined by School Facility Program (SFP) Regulation Section 1859.2 as any falsely certified application that allowed the district an advantage in the funding process. Education Code (EC) Section 17070.51 requires the Office of Public School Construction (OPSC) to notify the State Allocation Board (SAB) if any such certifications have been found. EC Section 17070.51 also provides the SAB with the authority to impose penalties if a finding of Material Inaccuracy is made by the SAB.

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".

For additional Authority citations for the loss of self-certification in association with a Material Inaccuracy, please see bolded section of Attachment C.

For additional Authority citations for the recovery of interest in association with a Material Inaccuracy, please see the bolded sections of Attachment D.

BACKGROUND

As a result of discussions involving the Material Inaccuracy Penalties item presented at the February 2008 SAB meeting, Staff was requested to present the background and methodologies used in recommending Material Inaccuracy penalties to the Implementation Committee. The issues were discussed extensively at four Implementation Committee meetings. Staff also formed a work group consisting of Implementation Committee members to solicit further suggestions. Staff took those suggestions into consideration and the revisions agreed on by the Staff and Committee members are outlined in Attachment A and B. There were some points of discussions where consensus could not be reach, which are also noted on the attachments.

This item was presented at the September 2008 SAB meeting, and due to the time constraints and the need for further discussion Staff was requested to bring this item back to this SAB meeting.

DESCRIPTION

The purpose of this report is to provide transparency and to clarify for the Board and the school districts the methodology in making recommendations for the loss of self-certification and the method for calculating interest in regards to a Material Inaccuracy finding associated with a premature or invalid fund release. Although there are other legitimate instances that require the recovery of interest, this item is intended to cover the recovery of interest only for a premature or invalid fund release associated with a Material Inaccuracy finding.

(Continued on Page Two)

DESCRIPTION (cont.)

The methodologies captured in Attachment A are the processes by which Staff's recommendations to the SAB are formed. Also, Attachment A represents the revisions agreed on by Staff and Implementation Committee members regarding the methodologies used in recommending the loss of self-certification penalties. The Board is not bound by the recommendations. After discussion at the Implementation Committee, Staff believes that modifications to or additional regulations are not warranted at this time. Approval of these methodologies will maintain the Board's flexibility when determining the loss of self-certification.

The examples shown in Attachment B represent the current statutory requirements regarding the recovery of interest lost by the State associated with a Material Inaccuracy finding. There was general consensus regarding the calculation of interest for projects with premature fund releases as detailed in Scenarios 1 and 2 in Attachment B. However, as outlined in Scenario 3 (invalid fund releases) in Attachment B, varying positions were discussed in relation to the calculation of interest for projects which did not meet the 18-month time limit of fund release and the condition placed on these projects at the time of re-filing. Staff's position regarding the recovery of interest is to uphold the SAB's fiduciary responsibility to recover the interest lost by the State during the period of time that the funds should have remained in the State bond fund earning interest. Current statute, EC Section 17076.10(d) requires the SAB to rescind the invalid fund release. The SAB Legal Counsel opines that the Staff's method of recovering interest for all scenarios as outlined in this item are the legal and appropriate methods, which is critical for maintaining the integrity of the State bonds.

RECOMMENDATIONS

1. Accept the methodology used to make recommendations to the SAB for the loss of self-certification relating to premature or invalid fund releases associated with a Material Inaccuracy finding as set forth on Attachment A and as outlined above.
2. Accept the methodology for the recovery of interest lost by the State relating to premature or invalid fund releases associated with a Material Inaccuracy finding as shown for Scenarios 1 and 2 and as set forth in Staff's positions for Scenario 3 on Attachment B.

ATTACHMENT A

MATERIAL INACCURACY – LOSS OF SELF-CERTIFICATION State Allocation Board Meeting, October 29, 2008

DISCUSSION

During the Implementation Committee meetings, a concern was raised regarding the School Facility Program Regulation Section 1859.104. It was implied that the regulation omits a section of Education Code Section 17070.51(b)(2) which states that the self-certification prohibition period could end when the district repays the amount owed. Legal counsel was consulted regarding this issue. The legal counsel's opinion was that the regulation is not in violation of the statute, and the State Allocation Board (SAB) has the authority to impose a loss of self-certification period of up to five years or impose a period which could end when the interest is repaid.

An audience member referenced Attachment B stating that the Material Inaccuracy regulation was not adopted until sometime near July 2002. This audience member was questioning whether a retroactive application of the regulation was appropriate. Staff consulted with the SAB Legal Counsel who reiterated that the regulations merely provided some further clarity and that the existing statute already provided a framework in which the SAB must require the following:

- Repayment by the district of additional funding received as a result of a material inaccuracy including interest;
- Prohibition of self-certification by the district for a period of up to five years;
- Establishment of an alternative method for state or independent certification of compliance by the Board; and,
- Payment by the district of any increased costs associated with the alternative certification process due to the loss of self-certification.

The following are suggestions agreed on by Staff and committee members as a result of committee meetings and the work group discussions regarding the loss of self-certification recommendations to the SAB:

For a district that did not meet the 18-month time limit on fund release:

Revisions to Staff Recommendation

The Staff's former recommendation to the Board would be to rescind the project and impose a five-year loss of self-certification. As a result of work group and Implementation Committee discussions, Staff has agreed to recommend a loss of self-certification period of *up to five years* (as outlined on Attachment A1). The rationale by committee members was that phrasing the recommendation in this manner would encourage the Board to exercise its authority to impose a loss of self-certification period.

Another suggestion was to consider the percentage of construction under contract when recommending loss of self-certification. Although, Staff asserts that there is no ambiguity in regards to the percentage that must be under contract prior to the submittal of the Fund Release Authorization form and that the statute is clear that the project must be rescinded, an agreement was reached that Staff would indicate on future SAB items the percentage of construction expenditures under contract. The Board may take into account the percentage of compliance when considering the recommendation for the loss of self-certification of up to five years.

DISCUSSION (cont.)

For a district that:

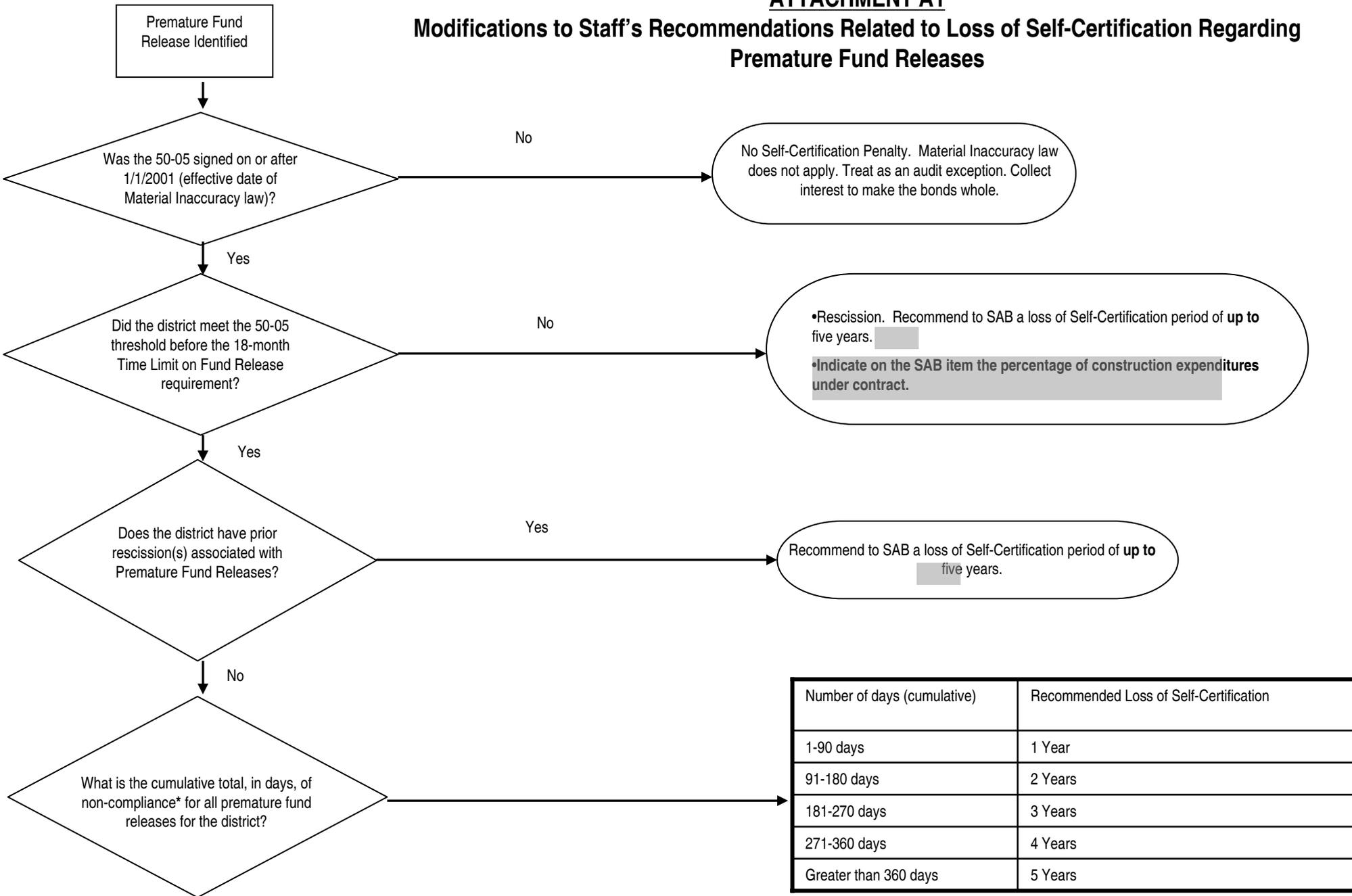
- Did meet the 18-month time limit on fund release
- Does have prior rescission(s) associated with invalid fund releases

Revisions to Staff Recommendation

The Staff's former recommendation to the Board would be a five-year loss of self-certification. As a result of work group and Implementation Committee discussions, Staff has agreed to recommend a loss of self-certification period of *up to five years* (as outlined on Attachment A1).

ATTACHMENT A1

Modifications to Staff's Recommendations Related to Loss of Self-Certification Regarding Premature Fund Releases



Number of days (cumulative)	Recommended Loss of Self-Certification
1-90 days	1 Year
91-180 days	2 Years
181-270 days	3 Years
271-360 days	4 Years
Greater than 360 days	5 Years

*Non-compliance refers to the period from warrant release date to the date the district met the 50-05 threshold for past and current items.

ATTACHMENT B

MATERIAL INACCURACY – RECOVERY OF INTEREST
State Allocation Board Meeting, October 29, 2008

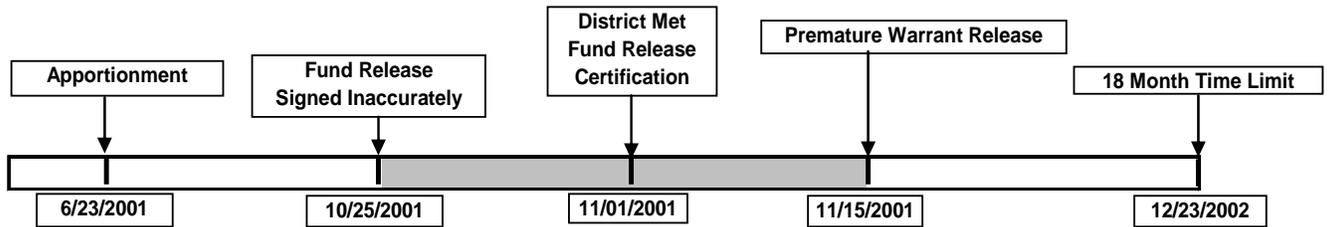
DISCUSSION

There was general consensus among committee members and Staff in regard to current practice as related to Scenario 1 and 2.

SCENARIO 1

PREMATURE FUND RELEASE
(NO FUNDING ADVANTAGE, NO MATERIAL INACCURACY)

- The District prematurely certified on 10/25/2001 (i.e., did not have at least 50 percent of the work in the plans and specifications under contract).
- The district met the *Fund Release Authorization* certification on 11/1/2001, before the warrant was released and therefore received no interest or funding advantage.

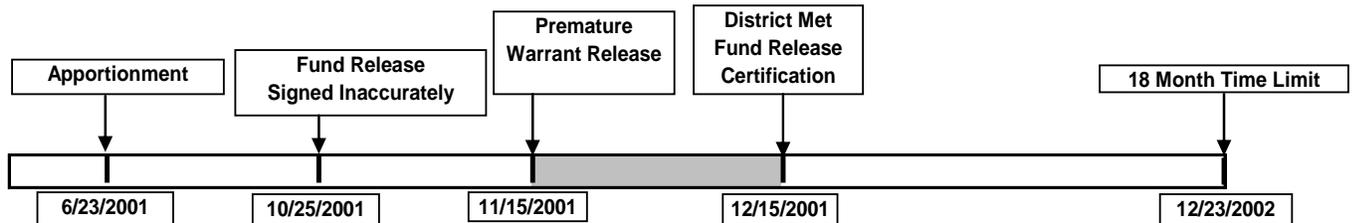


There were no revisions suggested for this scenario.

SCENARIO 2

PREMATURE FUND RELEASE
(FUNDING ADVANTAGE, MATERIAL INACCURACY)

- The District prematurely certified on 10/25/2001 (i.e., did not have at least 50 percent of the work in the plans and specifications under contract).
- The district met the *Fund Release Authorization* certification on 12/15/2001, after the warrant was released on 11/15/2001 and therefore received interest and a funding advantage.

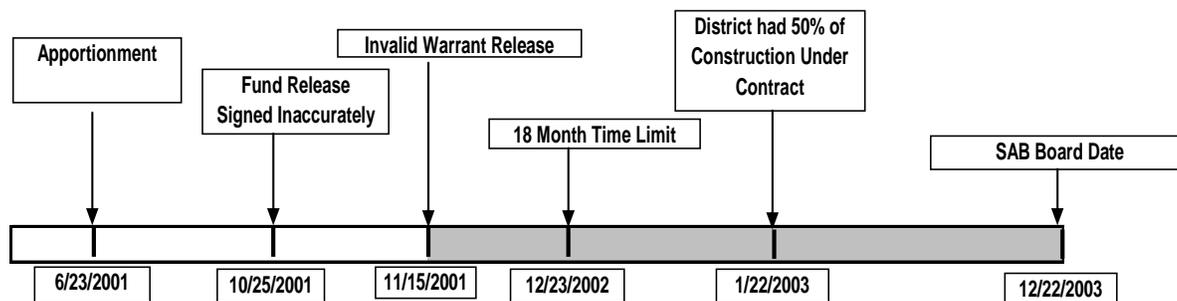


In this example, the interest is calculated from the date the warrant was released on 11/15/2001 to when the district met the *Fund Release Authorization* requirements on 12/15/2001. The committee agreed with the calculation of interest for this scenario.

SCENARIO 3

INVALID FUND RELEASE
 (FUNDING ADVANTAGE, MATERIAL INACCURACY COMBINED WITH
 VIOLATION OF LAW REQUIRING RESCISSION)

- The district inaccurately certified on 10/25/2001 (i.e., did not have at least 50 percent of the work in the plans and specifications under contract).
- The warrant was released to the district on 11/15/2001.
- The 18-month time limit expired on 12/23/2002.
- The district had a binding contract(s) for at least 50 percent of the construction included in the plans on 1/22/2003.
- The project was required by law to be rescinded, and the project approval was no longer valid.
- The district did not and does not qualify to receive a fund release. The fund release that occurred is invalid.
- The district received a funding advantage (shaded area below), and the State lost interest on these funds during the period of time that the funds should have remained in the State bond fund earning interest.



Staff Position Regarding Scenario 3

The Staff's prior recommendation for this scenario was to calculate interest from the date of the invalid warrant release on 11/15/2001 to the date the district concurred with the contract audit finding, or the date the item was presented to the State Allocation Board (SAB), whichever occurred first. After legal consultation, Staff expressed concerns at the Implementation Committee meeting that the date of the district's concurrence is arbitrary and does not establish a concrete timeline for the calculation of interest. Also, this method did not facilitate the recovery of interest to make bond funds whole since in this scenario it did not capture the total period of time that the funds should have remained in the State bond fund. After taking these comments into consideration, the SAB Legal Counsel's and Staff's position is that the interest must be calculated from the date of the invalid warrant release on 11/15/2001 to the date the item is approved by the SAB, which is critical for maintaining the integrity of the State bonds.

Committee Members Suggestions and Concerns

A committee member suggested that in Scenario 3, Staff should take into consideration whether the district actually proceeded with the project or not. This member argued that, if the district proceeded with the project and made progress payments, the district did not earn interest on the entire apportionment and should only be charged interest on funds remaining after the progress payments have been made. Staff responded that the project in this scenario is invalid and the district should have never received the funds. The SAB has the fiduciary responsibility to recover the interest lost by the State during the period of time that the funds should have remained in the State bond fund earning interest. Also, the SAB Legal Counsel opined that the statute does not allow the SAB to assess interest in portions; a district either has or has not violated the law requiring project rescission (Education Code Section 17076.10(d)).

DISCUSSION (cont.)

SCENARIO 3 (cont.)

Some of the committee members proposed that the period for the interest calculation for this scenario should be from the invalid warrant release date to the date the district had 50 percent of construction under contract. Staff would like to reiterate that in this scenario, per statute, the project approval and subsequent fund release are invalid and must be rescinded. The district was and is not entitled to the funds and when the district had 50 percent of construction under contract for this particular application is irrelevant. Since the funds had been released to the district, the SAB has the fiduciary responsibility to recover the interest lost by the State during the period of time that the funds should have remained in the State bond fund earning interest, which is critical for maintaining the integrity of the State bonds.

A concern was raised that since there is a significant amount of time from the invalid fund release date to when the Office of Public School Construction (OPSC) makes the audit finding, the district is penalized to a greater extent due to the length of time between the project completion, district expenditure reporting, and the OPSC final audit closeout processes. However, Staff noted that the district is solely responsible for signing the *Fund Release Authorization* form and authorizing the certifications made on the Form. The district is in possession of the project documents years in advance of the project reaching audit. If a district is concerned about this issue, it is incumbent upon the district to notify the OPSC. The OPSC will in turn expedite the closeout audit and send an item to the SAB, rescinding the project, to shorten the interest window for the district.

MODERNIZATION REIMBURSEMENT

In this scenario, when a modernization project is rescinded, and if the district wishes a new apportionment, the district is required to file a new *Application for Funding*, Form SAB 50-04. This is only possible because modernization apportionments can reimburse a district for a modernization project dating back to August 27, 1998. The project is assigned a new application number and, subject to the availability of modernization funds, receives a new apportionment and apportionment date. The 18 month time limit on fund release is now based on the new apportionment date. Since the district, in this example, had binding contract(s) for at least 50 percent of the construction included in the plans on 1/22/2003, it can sign the *Fund Release Authorization* form immediately following the new apportionment. In this instance, the certification made on this form would be valid since the district meets the criteria to have funds released. The district obtains a new fund release date.

Staff Position Regarding Modernization Reimbursement

In consideration of legal counsel's advice, allow the district to re-file the application with the condition that the apportionment, subject to the availability of modernization funds, will not exceed the amount originally funded for the project.

Committee Member Suggestions for Modernization Reimbursement

A committee member stated that a rescinded modernization project in this scenario should be eligible for funding at a new per pupil grant at the time of re-filing. This member argued that the increase in the grant would help the district cover the cost of remitting the interest due to the State. Staff responded that the increase in the annual construction cost index would provide an additional funding advantage to the district beyond the advantage gained by the invalid fund release. An audience member agreed with Staff stating that if the district was permitted to re-file at a new per pupil grant, the State would be paying for the interest it lost due to the invalid fund release and result in a benefit to the district. Also, this audience member reminded the committee members that the reason the Material Inaccuracy penalties were established was to gain taxpayers confidence that the bond funds would be used in an appropriate manner. Legal counsel also opined that in allowing the district to re-file an application in this scenario at a new per pupil grant would invalidate the Material Inaccuracy statute and reward the district for having a false/inaccurate certification.

(Continued on Page Four)

DISCUSSION (cont.)

NEW CONSTRUCTION REIMBURSEMENT

Staff Position Regarding New Construction Reimbursement

New Construction projects previously occupied that received an invalid fund release are ineligible for reimbursement pursuant to statute and current regulations. Education Code Section 17071.75 requires that locally funded classroom facilities provided must be counted in the districts' new construction baseline. Regulation Section 1859.70 states that the SAB shall only provide new construction funding if the approved application is received by the OPSC prior to the date of occupancy for any classrooms included in the construction contract. In the situation of an invalid fund release for a new construction project, the district has violated Education Code Section 17076.10(d). This statute stipulates that the Board shall rescind the apportionment and deny the district's application. In all likelihood, these classrooms would have already been occupied and therefore be locally funded and prohibited from reapplying for State funding.

Staff commented, however, that a new construction invalid fund release has not occurred to date. Staff anticipates this will not occur because of the districts' heightened awareness and the added internal controls instituted to help avoid this issue. Staff indicated that if this type of invalid fund release were to occur, it would highlight this issue for the Board at that time.

ATTACHMENT C

AUTHORITY - LOSS OF SELF-CERTIFICATION (In Bold)
State Allocation Board Meeting, October 29, 2008

EDUCATION CODE SECTION 17070.51

17070.51. (a) If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board.

(b) 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.

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board, for deposit into the 1998 State School Facilities Fund, an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

(2) The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy or until the district's repayment of the entire amount owed under paragraph (1). Although a school district that is subject to this paragraph may not self-certify, the school district shall not be prohibited from applying for state funding under this chapter. The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but shall not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.

(c) For school districts found to have provided material inaccuracies when a funding apportionment has occurred, but no fund release has been made, the board shall direct its staff to reduce the apportionment as necessary to reflect the actual nature of the project and to disregard the inaccurate information or material, and paragraph (2) of subdivision (b) shall apply.

(d) For those school districts found to have provided material inaccuracies when no funding apportionment or fund release has been made, the inaccurate information or materials shall not be considered, and paragraph (2) of subdivision (b) shall apply. The project may continue if the application, minus the inaccurate materials, is still complete.

AUTHORITY - RECOVERY OF INTEREST FOR PREMATURE OR INVALID FUND RELEASES

Fund Release Criteria

Education Code (EC) Section 17072.32 in part states that the essential element necessary to meet the criteria of a fund release is to have "...a binding contract for the completion of the approved project".

School Facility Program (SFP) Regulation Section 1859.90 states, "...the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50-05."

Form SAB 50-05, incorporated by reference in SFP Regulation Section 1859.90, requires the district, as a condition of funding, to certify that it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project.

EC Section 17072.32(a) states, "For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the school district that the school district has entered into a binding contract for completion of the approved project."

Material Inaccuracy

SFP Regulation Section 1859.2 (Definition of Material Inaccuracy), "Means any falsely certified eligibility or funding application related information submitted by the school districts, architects or other design professionals that allowed the school district an advantage in the funding process."

AUTHORITY - RECOVERY OF INTEREST FOR PREMATURE OR INVALID FUND RELEASES (cont.)

Material Inaccuracy (cont.)

To make a finding of Material Inaccuracy, EC Section 17070.51(a) states, "If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a Material Inaccuracy, the OPSC shall notify the Board."

Material Inaccuracy Penalties

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 at the rate paid on moneys in the Pooled Money Investment Account..."

Repayment of Material Inaccuracy Interest Penalty

SFP Regulation Section 1859.104.1(c)(1) states the district "must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1)."

Rescission of Project Apportionment

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, "...a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire...apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of resubmittal."

Modernization Reimbursement

SFP Regulation Section 1859.79.1 states, "...the Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998..."

New Construction Reimbursement

EC Section 17071.75 states that, "...After a one-time initial report of existing school building capacity has been completed, the ongoing eligibility of a school district for new construction funding shall be determined by making all of the following calculations: ... (b)(1) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant school district...to the number of pupils for whom facilities were provided from any state or local funding source after the existing school building capacity was determined... [by]...using the pupil loading formula set forth in Section 17071.25..."

SFP Regulation Section 1859.70 states, "... The Board shall only provide New Construction funding if the Approved Application was received by OPSC prior to the date of Occupancy for any classrooms included in the construction contract. After the date of Occupancy of any classroom in the construction contract, a district will be ineligible to see New Construction funding and the classrooms will be reduced from the baseline eligibility..."

AUTHORITY - LOSS OF SELF-CERTIFICATION

EC Section 17070.51(b)(2) states that, “The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a Material Inaccuracy or until the district's repayment of the entire amount owed under paragraph (1).” The statute further states, “...The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.”

SFP Regulation Section 1859.104.1(c)(2) further clarifies EC Section 17070.51(b)(2) and requires that the district “shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board.”

SFP Regulation Section 1859.104.1(c)(3) states the district shall file all projects pursuant to Section 1859.104.2 for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project.

SFP Regulation Section 1859.104.1(c)(4) states the district shall be subject to the fee prescribed by Section 1859.104.3, which states if the SAB has made a finding of Material Inaccuracy, the SAB shall charge the district an amount of \$100 per hour for the additional hours to process and review the district's applications submitted during the timelines prescribed in Section 1859.104.1(c)(2).

ATTACHMENT D

AUTHORITY - RECOVERY OF INTEREST FOR
PREMATURE OR INVALID FUND RELEASES (In Bold)
State Allocation Board Meeting, October 29, 2008

EDUCATION CODE SECTION 17070.51

17070.51. (a) If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board.

(b) 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.

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the school district shall repay to the board, for deposit into the 1998 State School Facilities Fund, an amount proportionate to the additional funding received as a result of the material inaccuracy including interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater.

(2) The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy or until the district's repayment of the entire amount owed under paragraph (1). Although a school district that is subject to this paragraph may not self-certify, the school district shall not be prohibited from applying for state funding under this chapter. The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but shall not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process.

(c) For school districts found to have provided material inaccuracies when a funding apportionment has occurred, but no fund release has been made, the board shall direct its staff to reduce the apportionment as necessary to reflect the actual nature of the project and to disregard the inaccurate information or material, and paragraph (2) of subdivision (b) shall apply.

(d) For those school districts found to have provided material inaccuracies when no funding apportionment or fund release has been made, the inaccurate information or materials shall not be considered, and paragraph (2) of subdivision (b) shall apply. The project may continue if the application, minus the inaccurate materials, is still complete.

AUTHORITY - RECOVERY OF INTEREST FOR PREMATURE OR INVALID FUND RELEASES

Fund Release Criteria

Education Code (EC) Section 17072.32 in part states that the essential element necessary to meet the criteria of a fund release is to have "...a binding contract for the completion of the approved project".

School Facility Program (SFP) Regulation Section 1859.90 states, "...the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50-05."

Form SAB 50-05, incorporated by reference in SFP Regulation Section 1859.90, requires the district, as a condition of funding, to certify that it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project.

EC Section 17072.32(a) states, "For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the school district that the school district has entered into a binding contract for completion of the approved project."

Material Inaccuracy

SFP Regulation Section 1859.2 (Definition of Material Inaccuracy), "Means any falsely certified eligibility or funding application related information submitted by the school districts, architects or other design professionals that allowed the school district an advantage in the funding process."

AUTHORITY - RECOVERY OF INTEREST FOR PREMATURE OR INVALID FUND RELEASES (cont.)

Material Inaccuracy (cont.)

To make a finding of Material Inaccuracy, EC Section 17070.51(a) states, "If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a Material Inaccuracy, the OPSC shall notify the Board."

Material Inaccuracy Penalties

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 at the rate paid on moneys in the Pooled Money Investment Account..."

Repayment of Material Inaccuracy Interest Penalty

SFP Regulation Section 1859.104.1(c)(1) states the district "must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1)."

Rescission of Project Apportionment

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, "...a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire...apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may re-file a new application for the project subject to district eligibility and priority funding at the time of resubmittal."

Modernization Reimbursement

SFP Regulation Section 1859.79.1 states, "...the Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998..."

New Construction Reimbursement

EC Section 17071.75 states that, "...After a one-time initial report of existing school building capacity has been completed, the ongoing eligibility of a school district for new construction funding shall be determined by making all of the following calculations: ...(b)(1) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant school district...to the number of pupils for whom facilities were provided from any state or local funding source after the existing school building capacity was determined... [by]...using the pupil loading formula set forth in Section 17071.25."

SFP Regulation Section 1859.70 states, "... The Board shall only provide New Construction funding if the Approved Application was received by OPSC prior to the date of Occupancy for any classrooms included in the construction contract. After the date of Occupancy of any classroom in the construction contract, a district will be ineligible to see New Construction funding and the classrooms will be reduced from the baseline eligibility..."

AUTHORITY - LOSS OF SELF-CERTIFICATION

EC Section 17070.51(b)(2) states that, "The board shall prohibit the school district from self-certifying certain project information for any subsequent applications for project funding for a period of up to five years following the date of the finding of a Material Inaccuracy or until the district's repayment of the entire amount owed under paragraph (1)." The statute further states, "...The board shall establish an alternative method for state or independent certification of compliance that shall be applicable in these cases. The process shall include, but not be limited to, procedures for payment by the school district of any increased costs associated with the alternative certification process."

SFP Regulation Section 1859.104.1(c)(2) further clarifies EC Section 17070.51(b)(2) and requires that the district "shall be prohibited from self-certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self-certification of project information may be less than five years as determined on a case-by-case basis by the Board."

SFP Regulation Section 1859.104.1(c)(3) states the district shall file all projects pursuant to Section 1859.104.2 for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project.

SFP Regulation Section 1859.104.1(c)(4) states the district shall be subject to the fee prescribed by Section 1859.104.3, which states if the SAB has made a finding of Material Inaccuracy, the SAB shall charge the district an amount of \$100 per hour for the additional hours to process and review the district's applications submitted during the timelines prescribed in Section 1859.104.1(c)(2).