ATTACHMENT D

STATE ALLOCATION BOARD
COMMITTEE ON PRIORITIES IN SCHOOL CONSTRUCTION FUNDING
CASH MANAGEMENT, PART III
April 12, 2011

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OVERVIEW

PURPOSE

To discuss topics related to cash management in the School Facility Program.

DESCRIPTION

The third meeting of the Subcommittee on Priorities in School Construction Funding/Cash Management (Committee) seeks to continue the discussion and obtain stakeholder feedback on the following topics:

1. Cash management and how to make apportionments moving forward
    a. 120 day time limit on fund release
    b. Continuation of Priority Funding rounds
    c. Combination options to address projects that remain on the unfunded list
2. Remaining bond authority
3. The fiscal crisis regulations
    a. Charter School Facility Program (CSFP) project re-activation and placement on the unfunded list
    b. Critically Overcrowded Schools (COS) program project re-activation
    c. Re-reviews of financial hardship projects on the Unfunded Approvals list.

AUTHORITY

See Attachment A.

BACKGROUND

The Committee met on February 8, 2011 and March 1, 2011 to discuss the topics listed above. Committee members requested a third meeting to receive additional stakeholder input regarding the recommendations and options previously adopted by the Committee and scheduled for recommendation to the full membership of the State Allocation Board (Board).

ITEM FORMAT

This item has been divided by topic. Behind each tab is a discussion item for the individual topic or sub-topic, followed by an overview of the March 1st Committee discussions and recommendations. Prior published Committee items can be found behind Tab 5.

CASH MANAGEMENT - Overview

PURPOSE

To discuss options for making apportionments in a simple and efficient way.

DESCRIPTION

Based on conversations at the past two committee meetings, below are some of the objectives and ideas that were raised by the Committee and the stakeholders:

- Keep the process simple
- Find a way to promote activity among applications on the unfunded list
- Reduce the original 18 month timeline to request funds

Several options to address these goals were discussed. At the March 1st meeting, the Committee voted to recommend to the Board a permanent change to the regulations to reduce the Time Limit on Fund Release (TLOFR) to 120 days, and requested that staff address the issue of projects that currently exist on the unfunded list. As a way to address projects on the Unfunded Approvals List (UAL), a stakeholder suggested starting an 18 month timeline for projects on the unfunded list.

Staff has provided information regarding the change to a 120 day TLOFR on pages four and five. The process for adding a timeline to the UAL is on page seven.

At the February 8th and March 1st meetings, the Committee also discussed alternate methods for conducting priority funding rounds in the future. Based on comments made by Committee members and stakeholders, on page six staff has provided a proposal for streamlining the priority funding process.

ACTION REQUESTED OF THE COMMITTEE

Vote on a recommendation for full Board consideration to determine a process for making apportionments in the future.

OPTIONS (some options may be combined)

1. Discontinue priority funding and change the regulations so that all apportionments made in the future are subject to a 120 day TLOFR, including those projects currently on the unfunded list.

2. Change the regulations to state that projects submitted to OPSC on or after the effective date of the regulations are subject to a 120 day TLOFR, but clarify that applications received by OPSC prior to the effective date are subject to the priority funding system.

3. Continue to use priority funding, but enhance the system as outlined on page six.

4. Start an 18 month time limit for projects on the existing unfunded list as outlined on page seven.

5. Start an 18 month time limit (as outlined on page seven) for projects added to the unfunded list after a date declared by the Board.

6. Make no changes; continue to use priority funding as it has been established in regulation.

Process for Making Apportionments with a 120 Day TLOFR

This option allows the Board to make apportionments as cash becomes available without opening additional priority funding rounds, but keeps the concept of having shorter timelines to submit a fund release request. This would provide the simplest most efficient method for making apportionments by reducing district and Staff workload.

HOW IT WORKS

Once cash is available to apportion the next project on the unfunded list the Board would make an apportionment to the first project in line. If there is not enough cash to fully fund the first project in line, the Board could offer partial funding or pass over the project and provide an apportionment to the next project on the list that can be fully funded. Current practice is to ask the district if they would like partial funding, and if not, move to the next project on the unfunded list. Accepting partial funding starts the TLOFR clock. The TLOFR would be 120 days. All projects on the unfunded list would be considered ready to move forward as soon as cash becomes available for their project, no certifications are necessary.

PROGRAM CHANGES NECESSARY

Regulation sections 1859.90, 1859.129, and 1859.197 will need to be updated for the appropriate timeline for requesting funds after an apportionment.

ADDITIONAL PROCESS CONSIDERATIONS

At the March 1, 2011 meeting Committee members indicated that a safety valve should be put in place for special situations that may cause a district to miss their 120 day deadline for requesting funds. An example of an issue that could pose a threat to districts meeting the deadline is bid protests. These situations can be handled on a case by case basis or can be included in regulation if desired by the Board.

ISSUES AND CONCERNS

- Stakeholders have raised concerns that projects currently on the unfunded list were approved in accordance to the 18-month timeline based upon regulations in effect at the time the applications were submitted.
    - Committee members felt that the expectation of a 90 day timeline has been advertised for almost a year.
    - The 18 month regulations are tied to apportionments and not Unfunded Approval; therefore the Board may have the flexibility to change the regulations.
    - Pursuant to Board action on March 11, 2009, placement on the unfunded list is not a guarantee of State funding. This is reflected on all funding items approved by the Board.
- Allowing a safety valve may increase the number of appeals/action items presented before the Board.
- Some stakeholders have indicated that the success of priority funding rounds may be due to reimbursement projects, and that a more adequate time to complete the bidding process is 180 days.
    - Committee members may wish to consider changing the TLOFR recommendation to a different length of time.

- Some stakeholders have suggested that districts with financial hardship status will not be able to meet a 120 day TLOFR.

Statistics on Priority Funding Participation for Financial Hardship districts

All priority funding rounds to date have required a 90 day TLOFR.

To date, all financial hardship projects that received apportionments and have submitted the fund release requests have done so prior to the specific deadline for each apportionment period. Some projects have time remaining before the deadline for specific apportionment periods.

No financial hardship districts that has submitted a fund release request has noted impediments to submitting the fund release requests by the required deadline.

Below are the financial hardship statistics by apportionment period.

First Priority Funding Round

Of the 115 financial hardship projects on the UAL, certifications were received for 81 projects. Of the 81 projects with certifications, nine received apportionments. All nine projects successfully submitted a fund release request within the required timeframe (100% success rate).

Second Priority Funding Round – December Apportionments

Of the 127 financial hardship projects on the UAL, certifications were received from 40 districts for 88 projects. Apportionments were made to 34 districts for 72 projects. Districts successfully submitted a fund release request for all 72 projects within the required timeframe (100% success rate).

Second Priority Funding Round – January Apportionments

Two additional financial hardship projects received apportionments, one design apportionment and one construction apportionment. Design applications have an automatic fund release process and do not need to submit a fund release request. The one construction application must submit a fund release request prior to the April 26, 2011 deadline.

Second Priority Funding Round – February Apportionments

Nine additional financial hardship projects received apportionments, five design apportionments and four construction apportionments. Design applications have an automatic fund release process and do not need to submit a fund release request. The four construction applications must submit a fund release request prior to the May 24, 2011 deadline.

Options for Streamlining the Priority Funding Process

The Committee previously discussed two methods of streamlining the priority funding process. The option presented below addresses prior concerns related to keeping the process easy to understand.

HOW IT WORKS

With this system, the Board would continue making apportionments in a manner consistent with the process that has been successful in the first two priority funding rounds.

In order to provide the most effective priority funding rounds the Board would align priority funding rounds with bond sales. Two priority funding rounds could be held each year in winter/summer to coincide with the fall/spring bond sales.

Currently districts are required to submit certification letters indicating that their projects meet the priority funding requirements during 30 day filing periods. In an attempt to streamline the process the Board could establish two certification filing periods each year. The filing periods would begin the 2nd Wednesday of January and the 2nd Wednesday of July. The filing periods would remain 30 days long. A certification submitted would be valid until the next filing period begins. This would eliminate the need for a Board approved filing period for each funding round and allow Staff to rapidly process the filing rounds as money becomes available.

In the event that a fall/spring bond sale does not take place, the Board must determine if a priority funding round should still be held. To do this the Board should determine a minimum cash threshold for opening a funding round. If the threshold is met, a priority funding round can commence and apportionments can be made at the next available Board meeting.

PROGRAM CHANGES NECESSARY

Regulation sections 1859.90.2, 1859.129 and 1859.197 will need to be updated, as necessary, to change the procedure for submitting certifications for make priority funding rounds.

ISSUES AND CONCERNS

- Priority funding does not allow the Board to provide apportionments on a continuous/seamless basis. Please see option 1 in Attachment B for a more detailed description.

Process for Starting an 18 month Timeline for Project on the Unfunded List

This option could be used with the existing priority funding process or it could be used in to assist with the transition to a 120 day TLOFR. This option would promote advancement of projects on the UAL.

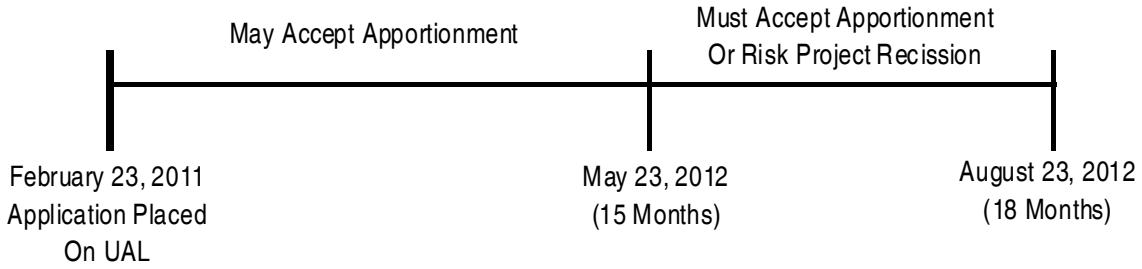
HOW IT WORKS

With this system the Board would implement a timeline for projects on the UAL to request an apportionment. Currently, there is no timeline and projects can remain on the unfunded list indefinitely.

Projects on the unfunded list would have 18 months to request an apportionment based on their date of Unfunded Approval (for those currently on the list, the 18 months could also begin based on a particular date established by the Board to address the issue of only making changes prospectively). During the first 15 months of the 18 month timeline, districts could choose to participate in priority funding, or they could decline. Once 15 months had passed (leaving 90 days or less remaining) districts would have to accept an apportionment or be subject to rescission if the remaining time passes and an apportionment is not accepted once cash is available.

The clock would be stopped after 15 months if no cash is available and re-started again when cash became available again.

> Example: A district receiving an Unfunded Approval on February 23, 2011 would be able to accept or decline an apportionment without having to rescind the project until May 23, 2012 (15 months). However if cash became available after May 23, 2012, the district would be required to accept the apportionment or the project will be rescinded on August 23, 2012.



This process could coincide with the option presented for streamlining priority funding on the next page.

PROGRAM CHANGES NECESSARY

Regulations should be created to explain the amount of time a project can remain on the unfunded list, and to specify that a project rescission will occur if the timeline is not met.

ISSUES AND CONCERNS

- If a timeline is started based on Unfunded Approval date while the State does not have cash available, districts may need to plan without knowing when they can expect funds.
- This may ultimately result in some districts having only 90 days to start the bid process if they cannot go out to bid without a guarantee of State cash.
- Stakeholders may feel that projects currently on the unfunded list were approved in accordance to the 18-month timeline based upon regulations in effect at the time the applications were submitted.
    - The Committee may wish to apply the change prospectively.

BONDING AUTHORITY - Overview

PURPOSE

To discuss the possible transfer remaining bonding authority.

DESCRIPTION

The bonding authority discussion was focused on three programs with remaining bonding authority including the Seismic Mitigation Program (SMP), the Overcrowding Relief Grant (ORG) and the modernization program, and the ability to transfer authority to alternate programs.

In the past, the Board and the legislature have considered options for the transfer of bonding authority and funds from programs with remaining bonding authority to programs of need. Some transfers can be made by Board action while others require legislative action with approval of two-thirds of the legislature. Details related to the programs within the SFP that have additional bond authority remaining, along with the action necessary to transfer the authority to new construction are available as part of the Committee item in Attachment C.

ACTIONS REQUESTED OF THE SUBCOMMITTEE

To vote on a recommendation concerning the transfer remaining bonding authority.

OPTIONS

1. Recommend the transfer of bonding authority from the SMP to the new construction program by Board action.
2. Recommend the transfer of bonding authority from the ORG to the new construction program by legislative action.
3. Recommend the transfer of bonding authority from the modernization program to the new construction program by legislative action.
4. Do not recommend transfer of any bonding authority at this time.

Transfer of Bonding Authority

The Committee previously discussed the possibility of transferring bonding authority from the SMP, ORG and Modernization to the new construction program.

HOW IT WORKS

The Board would be able to transfer SMP bonding authority through a policy decision whereas transferring ORG and Modernization bonding authority would require legislative action.

PREVIOUS COMMITTEE DECISIONS

SMP - Based on the Board's recent decision to create a Seismic Mitigation Committee to further explore avenues to make the SMP a more successful program, the Committee determined that the question of transferring authority should be revisited after the work group has completed its investigation and more information is available.

Modernization - The Committee discussed the viability of the modernization program and determined that the best course of action would be to use the modernization bonding authority for modernization projects and not attempt to transfer bonding authority to the new construction program.

ORG - Multiple Committee members were in favor of taking steps toward seeking a legislative action to transfer ORG bonding authority to the new construction program. No vote was taken at the Committee meeting but it was determined the subject would be addressed at the next Board meeting.

ISSUES AND CONCERNS

- Many stakeholders oppose the transfer of bonding authority.
- Seeking legislative action could be a long process.
- The viability of the SMP is still being examined.

FISCAL CRISIS REGULATIONS - Overview

PURPOSE

To discuss existing fiscal crisis regulations.

DESCRIPTION

Due to the State's fiscal crisis in early 2009, the Board adopted emergency regulations that would allow the Board to make findings that certain apportionments are "inactive" to relieve school districts from meeting various statutory and/or regulatory requirements.

In May 2010, the Board took action suspending re-reviews for financial hardship application on the UAL. In December 2010 the Board approved an action to grant a six month extension to the "inactive" CSFP, COS and Financial Hardship Re-Review regulations, while allowing the remaining emergency regulations to sunset on January 1, 2011.

The fiscal crisis regulations in regard to the "inactive" apportionments for the CSFP, COS and re-review of financial hardship applications were discussed at the March 1, 2011 committee meeting. See Attachment C for further details.

ACTIONS REQUESTED OF THE SUBCOMMITTEE

Vote on recommendations to determine how to proceed with the existing fiscal crisis regulations.

OPTIONS

Broken out by topic.

CSFP

1. Confirm that PAs should be re-activated once design and site advance fund releases have been provided. See Attachment E for further details.
2. Place all converted CSFP applications on the UAL based on their Preliminary Apportionment (PA) date.
3. Reserve a specified dollar amount out of the next bond sale for the purpose of funding CSFP projects.
4. Take no action and continue to place CSFP conversion applications on the UAL based on their Unfunded Approval date.

COS

1. Take action to activate all COS PAs.
2. Allow the PAs to remain inactive until the fiscal crisis regulations sunset.
3. Extend the fiscal crisis regulations.

FINANCIAL HARDSHIP RE-REVIEW

1. Allow the financial hardship re-review regulations to sunset.
2. Extend the financial hardship re-review regulations.

Charter School Facility Program

DESCRIPTION

As of this meeting, there are 49 “inactive” charter school preliminary apportionments (PA) totaling $575,830,332.

At the December 2010 meeting, the Board placed all CSFP PAs for advance fund release that have not received an apportionment on the UAL. The Board also took action to re-activate the project timelines once advance fund releases for design and site acquisition had been granted (See Attachment E). Currently, all PA conversion applications are placed on the UAL in order of their Unfunded Approval date.

The Committee discussion on this topic focused on whether full conversion projects (those ready for construction) should be given priority on the UAL. The Department of Finance (DOF) suggested moving all CSFP conversion applications up on the UAL in direct accord to their PA date because charter schools have been disadvantaged since the priority funding mechanism went into place.

OPTIONS:

Option 1: Place all converted CSFP applications on the UAL based on their PA date.

The DOF has indicated that these projects have been disadvantaged due to lack of access to priority funding apportionments. One method for remedying this situation is to place all charter PA conversion applications on the UAL based on their PA date. This would place the charter applications toward the front of the UAL and allow them to compete for priority funding.

PROGRAM CHANGES NECESSARY
This can be accomplished through a Board action and no regulatory change would be necessary.

ISSUE AND CONCERN
This could disadvantage other districts as CSFP conversion applications submitted after district applications could be placed higher on the UAL.

Option 2: Reserve a specified dollar amount out of the next bond sale for the purpose of funding CSFP projects for both advance fund releases and full construction applications.

The Board could choose to reserve enough cash to cover some or all of the CSFP projects (advance fund releases and/or full construction applications) or select a specified amount for use in an additional CSFP advance fund release filing round. This would allow charter schools to move forward and convert their projects as many charter schools need a guarantee of funding in order to acquire bridge financing to get the projects moving forward.

PROGRAM CHANGES NECESSARY
This can be accomplished through a Board action and no regulatory change would be necessary.

ISSUES AND CONCERNS

- This could disadvantage districts as there would be less money available for a future priority funding round or other apportionment method instituted by the Board.
- Reserving funding for the CSFP could set a precedent for similar SFP programs.
- If cash is reserved, what should happen to unused cash? A mechanism may need to be developed to address unused cash.
- How long should the cash be reserved?

Option 3: Continue to place CSFP conversion application on the UAL based on their Unfunded Approval date.

Under this option there would be no change to the method currently used for providing Unfunded Approvals and Apportionments to CSFP applications.

PROGRAM CHANGES NECESSARY
No program changes required.

ISSUES AND CONCERNS

- This could disadvantage charter schools as many projects can not move forward without the guarantee of funding.

Critically Overcrowded Schools

DESCRIPTION

At the October 2004 meeting, Proposition 55 COS PAs were made for 496 projects for a total of $1.8 Billion. As a result of the fiscal crisis, the Board took action on 344 projects and declared them Inactive PAs as of December 17, 2008. The projects were declared inactive to protect the statutory time limits on the PAs. Since that time, of the 344 projects declared inactive, 311 have met the requirements to convert to a Final Apportionment and have been placed on the Unfunded List, leaving 33 COS Inactive PAs. If reactivated, these COS PAs would have approximately ten months to convert or rescind their reservation of bond authority.

It has been over 5 years since COS applications received PAs. At the December 2010 Board meeting all remaining COS Environmental Hardship advance site acquisition approvals were placed at the top of the UAL just below the Facility Hardship applications (See Attachment E).

HOW IT WORKS

The Board has the option to remove the “inactive” status from all COS PAs and start their 10 month timeline. If the “inactive” status is not removed from the project the Board must make a determination concerning the fiscal crisis regulations. The regulations can be extended or the Board can allow the regulations to sunset. Prior to the sunset of the regulations, the Board needs to re-activate or they lose the ability to do so in the future.

At the March 1, 2011 committee meeting the members unanimously voted to endorse removing the “inactive” status from all COS PAs. Likewise, the DOF recommends reactivation of all COS PAs.

PROGRAM CHANGES NECESSARY

- The Board can remove the “inactive” status from all COS PAs through a Board Action and no regulatory change would be necessary.
- Regulation Section 1859.148.2 would need to be updated if the Board chose to extend the COS fiscal crisis regulations.

Financial Hardship Re-Review

DESCRIPTION

At the May 2010 meeting, the Board adopted Regulations to waive the unfunded financial hardship re-review requirement for projects added to the Unfunded List due to the State's inability to provide AB 55 loans. In December of 2010 the Board approved an action to grant a six-month extension to the Financial Hardship Re-Review regulations.

Although several unfunded approvals have been converted to apportionments with the funds made available through the first two priorities in funding rounds, as of this meeting, there are 78 projects with financial hardship status remaining on the unfunded list.

HOW IT WORKS

The Board has the option of extending the fiscal crisis regulations or allowing them to sunset.

Until the Board adopts a different cash management system, projects with financial hardship status will still remain on the UAL (Lack of AB 55 Loans) until bond sale proceeds become available, which may trigger a re-review if this regulation is allowed to sunset. Allowing this to occur may not be in keeping with the Board's original intent in approving this regulation change and may cause school districts to have to go through an additional review before accessing an apportionment. However, if the Board adopts the position that the fiscal "crisis" is in fact over and that methods of making apportionments have now changed, it may be appropriate to allow this regulation to sunset and consider a return to the original process.

There are currently 78 financial hardship applications from 44 districts on the UAL (Lack of AB 55 Loans). As of July 1, 2011, 57 projects from 36 of these districts would be past the 180 day timeline and require a re-review if the regulations are allowed to sunset. The numbers could be reduced if some of these financial hardship districts come in for financial hardship reviews for new SFP projects.

FINANCIAL HARDSHIP RE-REVIEWS

- Districts would retain their Financial Hardship status.
- The re-review would only request updated capital facility financials from the close of the last Financial Hardship review period to the current period.
- The reviews would be done in a timely manner to minimize any funding delays to the district.
- If the priorities in funding rounds were established at certain times of the year, then any districts that would need a re-review would be known ahead of time and could be completed in advance of any apportionments.
- A re-review that results in a district contributing additional funds to their project would mean additional funds becoming available for other districts and their projects currently on the unfunded list.

PROGRAM CHANGES NECESSARY

- No program changes are necessary if the Board allows the regulations to sunset.
- Regulation Section 1859.81(f) would need to be updated if the Board chose to extend the COS fiscal crisis regulations.

ISSUES AND CONCERNS

- Are financial hardship districts receiving a funding advantage through not undergoing a re-review?