

STATE ALLOCATION BOARD  
SUBCOMMITTEE ON PRIORITIES IN SCHOOL CONSTRUCTION, PART II  
October 28, 2010

PURPOSE

To present options and discuss possibilities for expediting the flow of cash to district's ready to request funds for projects on the Unfunded Approvals list.

BACKGROUND

The State is currently in a financial situation which requires heightened awareness of cash management. The Office of Public School Construction (OPSC) currently has cash available for disbursement. The available cash is a combination of active apportionments that have yet to request the release of funds, project rescissions, and additional cash made available through the audit process.

The majority of cash available can be attributed to active apportionments that have yet to request the release of funds. Projects that received an Apportionment prior to the inception of the initial priority funding round have up to 18 months to request a fund release pursuant to Statute and School Facility Program (SFP) regulations, while projects that receive a priority funding Apportionment have a 90 day fund release request requirement. Currently school districts that received an Apportionment prior to August 4, 2010 may have apportionments for projects that will not be moving forward, but the districts may be reluctant to give up the apportionments until they are required to do so.

During the August 4, 2010 priority funding round the OPSC received certifications from districts with unfunded approvals for approximately \$1.2 billion in projects that would be ready to request funds if they receive an Apportionment. The recent priority funding round has highlighted the following issues:

- The State has funds committed to projects that are not yet ready to submit a fund release request, while projects that are ready to request funds are unable to access funding.
- There is no incentive for a school district to rescind projects prior to the 18 month deadline.

AUTHORITY

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

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

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

SFP Regulation Section 1859.197(a) states that "If an apportionment was made for a Career Technical Education Facilities Project, the applicant must submit a Form SAB 50-05 within 18 months of the Apportionment as outlined in Education Code Section 17076.10 or the apportionment shall be rescinded without further Board action."

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

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

### **SHORT TERM OPTIONS:**

The Board can make amendments to the SFP regulations to expedite the release of funds. Below are options that can be implemented before the end of 2010 if the SAB adopts emergency regulations. The options presented are not mutually exclusive and a combination of options may be most successful as it may involve a larger number of projects. However, many of the options presented are voluntary, so outcomes if these changes are adopted will not be known until a future time point.

#### ***Option 1: "Buy Time"– Allow districts to switch from an active Apportionment to an Unfunded Approval.***

Under this proposal, districts that received an Apportionment and do not intend to proceed with the project in the near future would have an opportunity to return the Apportionment to the State in return for a place on the Unfunded Approval list. Under this option a returned Apportionment is rescinded but the project goes back to the Unfunded Approvals list without the district having to resubmit the application. The project returning to the Unfunded Approvals list would be required to meet the time limit on fund release request requirements set by the State Allocation Board (Board) at the time of the Apportionment.

#### *Pros:*

- Cash from returned apportionments will be available for distribution to other projects ready to request funds.
- Provides districts that are currently unable to move forward with a project more time to bring their project to fruition.
- Districts would not be required to resubmit their funding application for OPSC review and approval.
- Districts that have received apportionments but not yet requested a fund release will have an incentive to return the Apportionment before the 18 month deadline.

*Con:*

- Projects that have been returned to the Unfunded Approvals list could remain on the list for an indefinite period of time.

*Program Changes:*

- SFP Regulation Section 1859.90 and 1859.197 would need to be modified to allow for projects to return apportionments.
- SFP Regulation Section 1859.93 and 1859.93.1 would need to be modified or removed as projects would no longer be following a First In-First Out (FIFO) methodology.

EC Section 17076.10(d) provides that districts must submit a fund release request within the timeframe allotted by the Board, but not to exceed 18 months. Currently the Board uses the full 18 month timeframe as set forth in SFP Regulations Section 1859.90.

*Questions:*

- What Board approval date should be used for projects with returned apportionments that are placed on the Unfunded Approvals list?
  - Original Board approval date
  - Submittal date of request to return apportionment
  - Date of apportionment of new project
  - Bottom of the list
- Should districts returning an Apportionment to the State be required to wait a set period of time before becoming eligible to re-request an Apportionment for the same application?
- Should there be a filing period or set period of time in which districts can request to return an Apportionment to the State?
  - If there is continuous filing, what should the limit be for when districts can voluntarily give up their apportionment (after 6 months have passed? 12 months?)?
- How long can a project remain on the Unfunded Approvals list?

***Option 2: “Swap Projects” - Allow districts to receive an Apportionment for a project that is ready to request funds and is on the Unfunded Approval List in exchange for moving a project that has received an Apportionment but has yet to request funds to the Unfunded Approval list.***

Under this proposal, districts would voluntarily agree to swap projects. Projects from the Unfunded Approval list receiving an Apportionment from the swap would be required to meet the time limit on fund release requirements established by the Board. The State funding for the newly apportioned project would have to be made from the same bond source as the originally apportioned project and could not exceed the Apportionment amount for the original project.

For example, if a district’s original Apportionment was for a Prop 1D amount of \$25 million (which is then moved to the Unfunded Approvals List), the district could receive a Prop 1D State Apportionment for one or more projects ready to request funds that total no more than \$25 million.

Pros:

- Provides an incentive for districts to “step out of line”. The district could receive cash for a project ready to request a fund release now, and save the project with the original Apportionment by moving it to the Unfunded Approvals list so that it may be apportioned in the future when cash is available and the district is ready to proceed.
- Districts would not be required to resubmit their funding application for OPSC review and approval.

Cons:

- Limited universe - Only school districts with apportioned but unreleased funds and projects on the Unfunded Approvals list ready to request funds would be able to participate.
- District opposition – This could prevent other school districts whose projects could also be ready to request funds from accessing returned apportionments.
- Would require significant policy changes to the SFP regulations and is contrary to the traditional concept of processing, approving, and funding applications in the order of receipt.

*Program Changes:*

- SFP Regulation Section 1859.90 and 1859.197 would need to be modified to allow for projects to exchange apportionments.
- SFP Regulation Section 1859.93 and 1859.93.1 would need to be modified or removed as projects would no longer be following a FIFO methodology.
- New regulations would be required to allow for the switching of apportionments between two separate projects under this specific situation.

*Questions:*

- What happens to any excess cash if a district exchanges a large project with an Apportionment for a small project on the unfunded list (ex. District swaps \$25 million Apportionment for a \$20 million Unfunded Approval leaving an excess of \$5 million)?
- Would districts be eligible to swap projects from different SFP programs as long as the funding source is the same (i.e. swapping an Overcrowding Relief Grant Apportionment for a New Construction project on the Unfunded Approvals List)?

***Option 3: “Exchange and Rescind” - Allow districts to receive an Apportionment for a project that is ready to request funds and is on the Unfunded List in exchange for the rescission of a project that has received an Apportionment but has yet to request funds.***

Under this proposal, districts would voluntarily agree to the exchange and rescission. This Option would require the district to truly rescind the apportioned project. A rescinded project would not receive a place on the Unfunded Approvals list. The State funding for the construction project ready to request funds would have to be made from the same bond source as the rescinded project and could not exceed the Apportionment amount for the rescinded project.

*Pros:*

- District incentive - Projects that have received apportionments yet not requested a fund release will have an incentive to rescind the Apportionment before the 18 month deadline in exchange for another project.
- School construction needs for future bond sale consideration may be more accurately demonstrated.

*Cons:*

- Limited universe - Only school districts with apportioned but unreleased funds and projects on the Unfunded Approvals list ready to request funds would be able to participate.
- District opposition – This would prevent other school districts that are ready to request funds for specific projects from accessing cash from returned apportionments.
- Application resubmittal - If a district opts to rescind an Apportionment and later wishes to proceed with the project, the district would be required to resubmit its funding application for OPSC review and approval.
- Would require significant policy changes to the SFP regulations and is contrary to the traditional concept of processing, approving, and funding applications in the order of receipt.

*Program Changes:*

- SFP Regulation Section 1859.93 and 1859.93.1 would need to be modified or removed as projects may no longer be following a FIFO methodology.
- New regulations would be required to allow for the swapping of apportionments between two separate projects under this specific situation.

**OTHER OPTIONS**

**Option 4: Use a Pooled Money Investment Board (PMIB) model.**

Under this option, without additional cash becoming available, the Board would provide apportionments through a priority funding round for \$200 million in addition to the \$599.5 million previously allocated. Under this option, all \$799.5 million in apportionments would have access to the \$599.5 million in cash currently available. This model balances the need to have cash available with the rate at which it is being drawn down by districts.

*Pros:*

- Would help distribute cash in a quick manner while helping to stimulate the economy.
- This option could be implemented for all applications that have not yet received an Apportionment (as opposed to the options where a district must have an active apportionment plus a project on the Unfunded Approvals list).
- School construction needs for future bond sale consideration may be more accurately demonstrated.
- Districts with an Apportionment that is ready to move forward may act more quickly to access the cash to avoid waiting later on if the cash available is all released.

*Cons:*

- The Board could be liable as cash could not be available if all projects requested funding before cash to cover the additional \$200 million in apportionments becomes available.

*Program Changes:*

- No new regulations or regulation updates would be required.

**Option 5: Temporarily or permanently change the time limit on fund releases for future apportionments.**

Based on the Statute it is within the Board's authority to reduce the time limit on fund release from 18 months based on EC Section 17076.10(d).

*Pros:*

- Would help distribute cash in a quick manner while helping to stimulate the economy.
- This option could be implemented for all applications that have not yet received an Apportionment.

*Cons:*

- District opposition – Not all districts may have the staff or ability to move forward with projects during the 90 day timeframe.

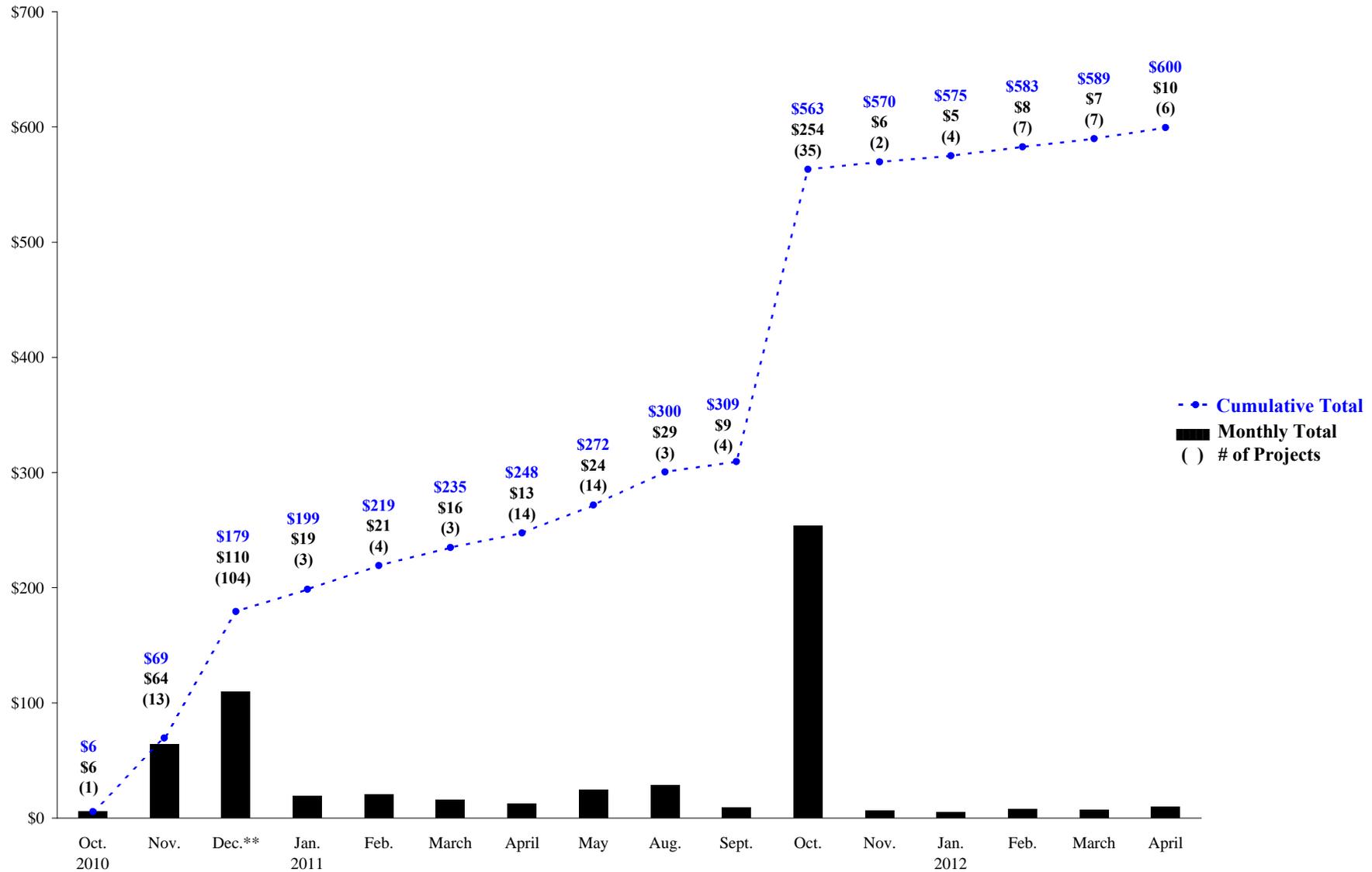
*Program Changes:*

- SFP Regulation Sections 1859.90 and 1859.197 would need to be modified to clarify the change of time limit for fund release.

*Questions:*

- What long term effects would the change have on school districts?
- Are districts only complying with the 90 day requirement for priorities in funding because there is currently no other way to receive cash?

## School Facility Program Apportionments Set to Expire due to Time Limit on Fund Release, as of 10-14-10 (monthly and cumulative totals, in millions of dollars)



\*\*December data include 99 Career Technical Education projects (worth \$87.5 million) that will rescind if CDE/DSA plans aren't received by 12/10/10. If CDE/DSA plans are received, then the projects will have an additional 18 months to request a fund release.

**General Obligation Bond Sale Funds  
Released by Month  
As of October 14, 2010**

