Subcommittee on Rules and Procedures
State Allocation Board

Report of the Assistant Executive Officer
February 14, 2011

Reconsideration

PURPOSE OF REPORT

To provide options for consideration on the language the Board should adopt regarding reconsideration of items.

DESCRIPTION

This item is a continuation of the discussion regarding adoption of a uniform policy to handle items up for reconsideration at the Board.

AUTHORITY

California Senate Rule No. 43: On the day on which a vote has been taken on any question, a motion to reconsider may be made by any Member (not just someone who voted on the prevailing side). Reconsideration may be granted only once.

In American legislative bodies, there is a strong tradition of affirming the right to reconsider with almost no restrictions. (*Mason's Manual of Legislative Procedure,* National Conference of State Legislatures (2010, p. 297-298).

"With certain exceptions, every legislative body has the inherent right to reconsider a vote on any action previously taken by it. When not otherwise provided by law, all public bodies have a right during the session to reconsider action taken by them as they think proper, and it is the final result only that it is to be regarded as the thing done. Unless some right of a third person intervenes, all deliberative bodies have the right to reconsider their proceedings during a session as often as they think proper... Under general parliamentary law, most motions, whether carried or lost, can be reconsidered."

However, reconsideration is typically not allowed if another motion (e.g. to take from the table) would accomplish the result more directly (e.g. than reconsidering the motion to lay on the table). It is also not possible to reconsider if, for instance, vested rights have been acquired as a result of the action, or the subject is otherwise beyond the control or out of reach of the body taking the original action. (Mason's p. 299)

Mason's Manual states further:

"The courts do not support the statement that, as a rule of parliamentary law, the motion to reconsider may be made only on the day the vote was taken or on the day following. If it is desired to restrict the time within which the motion may be made, it should be done

by rule. In practice, the right is closely restricted in time because the motion cannot be made after the subject of the vote is out of the possession of the body." (Mason's p. 310)

BACKGROUND

Reconsideration has been discussed several times at the subcommittee and was presented to the Board for action on language on December 15th, but there were still some concerns about the wording of the language.

Per the request of the Board and Chair, this item is back for discussion at the subcommittee. Below are several options on the wording of reconsideration.

STAFF ANALYSIS

Option #1:
A motion to reconsider an action of the Board, where an action has been taken to pass or adopt an item, shall be in order and shall be voted upon at the same meeting. If the motion is carried by a vote of a majority of the Board membership (six votes), the action may be considered a second time at that meeting or the subsequent meeting.

A motion to reconsider a board action that fails passage may be voted upon on the same day; however, the action may not be heard and voted upon again until the next regularly scheduled meeting of the board to allow for public notice of the item.

Option #2 - Original Adopted Language in Subcommittee:
A motion to reconsider actions of the Board may be made by anyone on the Board. Reconsideration takes six (6) votes for an item in which a vote has already been taken and the outcome announced. Reconsideration of regulations or interpretations of regulations will not affect outcomes already taken on prior Board actions. On the day in which a vote has been recorded on any item, a motion to reconsider the vote may be made by any Board Member for hearing at a future Board meeting. Reconsideration may be granted only one.

RECOMMENDATION

Adopt Recommendation #1

Subcommittee on Rules and Procedures
State Allocation Board

Report of the Assistant Executive Officer
February 14, 2011

Appeals

PURPOSE OF REPORT

To establish a transparent, set policy and provide direction to the Office of Public School Construction (OPSC) in the processing of appeal items considered at the State Allocation Board (SAB).

DESCRIPTION

This item is a continuation of the discussion regarding adoption of a uniform policy and procedure for handling Appeals to the Board.

The primary objective of setting an appeal procedure is to provide a fair and transparent timeline for processing appeals with a secondary objective of streamlining the entire appeal process. Currently, the SAB does not have a standard policy or set guidelines related to the review, processing and presentation of appeal items to the SAB.

AUTHORITY

Currently, the SAB does not have a formalized policy or set guidelines related to the review, processing and presentation of appeal items to the SAB.

Based on a 1995 item presented to the SAB, legal counsel opined regarding the processing of appeal indicated that it is within the authority of the SAB to establish priorities for addressing agenda items and conducting meetings.

BACKGROUND

Currently, there is no standardized appeal policy or process adopted by the SAB. While OPSC is attempting to establish an internal timeline process, the establishment of a formalized appeal process will set-up an objective and transparent process that is fair to all.

With the reduced staffing levels and normal workload, processing an appeal takes a lot of staff time in research and preparation of the appeal to the Board. Thus, in order to establish a fair and equitable timeline in the processing of appeals, appeals shall be set for SAB hearing 90-120 out from the date the Form 189 is received. In the event the issue on appeal has a health and safety effect on pupils, this item shall take precedence over any other appeal.

STAFF ANALYSIS

Option 1:

Filing an Appeal
Upon reaching a disagreement with the OPSC on an item, the school district must file a Form 189 to begin the formalized appeal process. The Form shall be filed with the OPSC. The Form should state the basis or bases for the appeal and any relevant information for resolving the dispute.

Timeline for processing an appeal
Timeline for processing a policy appeal: 90 days – 120 days. In the event the appeal is dealing with a health and safety issue, the appeal shall take precedence and be processed to the Board within 60-90 days.

Within 5 working days of receiving the appeal the analyst will send an acknowledgement letter informing the school district OPSC has received the appeal, has begun processing it, and the date the item will be heard on the SAB workload, but no later than 120 days from receipt of a Form 189. A copy of this letter shall go to the AEO and the Chair of the Board.

Request for Postponement
Any request for postponement by the school district shall be in written form addressed to the Chair and Vice Chair of the Board and shall include a statement of the reasons supporting postponement. An approval or disapproval shall be communicated in writing to the party seeking postponement no later than 5 working days before the hearing. If the request for postponement is approved, a new notice of hearing shall be mailed to the school district no later than 15 days before the new hearing date.

Option 2:

Include all of Option 1, but instead of requesting OPSC to develop a timeline, adopt the timeline below.

Draft Timeline (Summary)
- OPSC receives the Form 189 from District
- Within 5working days --- OPSC sends letter to district acknowledging receipt
- Within 30 days --- OPSC, EO, AEO and other relevant personnel shall meet with school district
- Within 45 days --- initial OPSC recommendation on appeal due to AEO & EO.
- (By day 60) AEO & EO have 14 days after receiving initial OPSC recommendation to review, edit and finalize recommendation.
- Day 60, Upon finalizing the appeal position, OPSC shall mail to the School district.
- Within 14 days of receiving the final OPSC position, the District shall inform OPSC in writing if they agree with the recommendation or wish to move forward to have the item heard at the SAB. (Approximately Day 80)
- Appeal is scheduled to be heard at next regular Board meeting – thus having the hearing within the 120 days.

RECOMMENDATION

1) Approve Option #1.
2) Direct OPSC to Bring Option #1 to full SAB for adoption.
3) Direct OPSC to include the following in the recommendation for adoption by the full SAB:
   Direct OPSC to develop a timeline to be used for processing all appeals, which allows for communication with the District prior to presentation at the Board, and allows for transparency and objectivity. OPSC shall bring back the timeline for processing and communication with the District that meets the 90-120 day timeline for Board adoption at the next regularly scheduled meeting.

Subcommittee on Rules and Procedures
State Allocation Board

Report of the Assistant Executive Officer
February 14, 2011

Audit Exception Policy

PURPOSE OF REPORT

To provide direction to the Office of Public School Construction (OPSC) in the processing of Material Inaccuracy items, where the State Allocation Board (SAB) has the discretion of finding and Audit Exception.

DESCRIPTION

This item is a continuation of the discussion regarding adoption of a policy and procedure for offering other legal solutions besides a finding of Material Inaccuracy. These solutions have been referred to as a 'mercy clause' or substantial compliance.

AUTHORITY

General Authority of SAB: The SAB is the statutorily-empowered board that is responsible for determining the allocation of the proceeds from State General Obligation Bonds issues intended for the construction and modernization etc. of California's public school facilities. Pursuant to Government Code Section 15490, the SAB is granted specific authority to make apportionments and disbursements under the provisions of each voter approved bond act. Additionally, the SAB is responsible for establishing policies and regulations for the programs authorized under each bond act and administered by the OPSC.

Material Inaccuracy: Education Code 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.

Material Inaccuracy Penalties: Regulation Section 1859.104.
When the Board makes a finding that a Material Inaccuracy occurred for a SFP Project, the district shall be subject to the following penalties:
…
(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:
(1) 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).
(2) 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.

(3) Shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

Self-Certification Prohibition: Regulation Section 1859.104.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

Self-Certification Prohibition Processing Fee: Regulation Section 1859.104.3

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of $100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in Section 1859.104.1(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part C, and the special day class pupils reported in Part D of Form SAB 50-01. The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

Education Audit Appeals Panel Codes: ***(Findings May Be Appealed)***

Section 41344(d) provides that a local educational agency "may appeal a finding contained in the final report, pursuant to Section 41344.1." An appealable finding is one when, "as the result of an audit or review, a local educational agency is required to repay an apportionment significant audit exception or to pay a penalty arising from an audit exception." (§ 41344(a).) A finding that a local educational agency violated the limitation on ADA that may be claimed for apportionment set out in Section 51745.6 and Title 5, Section 11704 results in an "apportionment significant audit exception" if the amount of the over claim is "an amount equal to revenue limit funding for one unit of average daily attendance." (§ 41341(a)(1).) It is immaterial whether such a finding – or a finding of any other noncompliance with conditions for receipt of state funding – is made in a report of an audit required pursuant to Section 41020, or Section 47634.2(d), or Section 1241.5, or any audit conducted by the State Controller, or any other "audit or review conducted by a governmental agency that provided the local educational agency with an opportunity to provide a written response." (§ 41344(e).)

BACKGROUND

Audit Exception means a proposed adjustment by the responsible agency to any expenditure claimed by a school district by virtue of an audit.

Mercy Clause Discussion-*May 27, 2009 SAB Meeting*

The circumstances behind some of the recent appeals have caused the SAB to consider whether they should provide relief to districts with these unusual circumstances, when a district essentially complied with the intent of the law, but due to circumstances out of their control, they didn't meet the letter of the law. This has been deemed to be the "Mercy Clause".

OPSC presented an issue paper indicating their outreach efforts and their in-depth review of application submittals has resulted in less than a 1 percent staff rejection rate. They stated the establishment of a "mercy clause" is outside of the SAB's authority, and that this would require legislative changes to the program. Staff stated the SAB is the "court of appeal" for the School Facility Program and that the system works quite well.

The Board's legal counsel noted that if the Board takes an action that exceeds the power granted under the statutes, the action may be deemed void. Senator Hancock expressed the SAB needs a way to resolve some of the issues that relate to the concept of "substantial compliance". Therefore, this issue has been referred to the Rules & Procedures subcommittee for further discussion.

SAB Action at May 27, 2009 meeting

The SAB referred this item to the SAB Sub-committee on Rules and Procedures to address appeals and the concept of "Substantial Compliance". OPSC is to report quarterly on appeals presented to the SAB.

STAFF ANALYSIS

By discussing the SAB option of finding a mistake as an audit exception allows the SAB to recover funds without accusing a district of falsely certifying a document. The SAB has a history of making these findings in the past.

Currently, statute and regulations allow the SAB discretion regarding a finding of material inaccuracy and what the penalty should be. Thus, in order to allow the Board the ability to recover funding it finds should be returned without the pressure of a finding of material inaccuracy, this policy gives the Board the ability to fashion a penalty and make a finding of an Audit Exception, when the Board does not feel the transgression rose to a material inaccuracy or false certification. The Board may make this finding on a case-by-case basis.

By allowing the SAB to find audit exceptions in certain, individual situations, it takes away the pressure of finding a school district material inaccurate or not material inaccurate.

Therefore, adopting an option of finding an Audit Exception allows the Board to recover funds without accusing a district of falsely certifying. A finding of Audit Exception will continue to allow the SAB to send a message yet stop short of a material inaccuracy finding.

RECOMMENDATION

1) Direct the Audit Exception Policy to be taken to full SAB for adoption.
2) Direct the OPSC to include in the recommendation for adoption at the full SAB the option of finding an Audit Exception with each item presented to the SAB as Material Inaccuracy.
3) Direct including the Audit Exception Policy in the Rules & Procedures Document