

**MINUTES**  
**State Allocation Board**  
**October 29, 2008**

Upon notice duly given, the monthly meeting of the State Allocation Board was held in Room 4203 of the State Capitol in Sacramento, California on October 29, 2008 at 2:00 p.m.

Members of the Board present were as follows:

- Tom Sheehy, Chief Deputy Director, Policy, Department of Finance, designated alternate for Michael Genest, Director, Department of Finance (DOF)
- Scott Harvey, Chief Deputy Director, Department of General Services, designated alternate for Will Bush, Director, Department of General Services (DGS)
- Kathleen Moore, Director, School Facilities Planning Division, California Department of Education (CDE), designated representative for Jack O'Connell, Superintendent of Public Instruction
- Rosario Girard, President and CEO, Phoenix Construction Services, Inc., appointee of Arnold Schwarzenegger, Governor of the State of California
- Senator Bob Margett
- Senator Jack Scott
- Senator Joe Simitian
- Assembly Member Gene Mullin
- Assembly Member Jean Fuller
- Assembly Member Julia Brownley

Representatives of the State Allocation Board (SAB) were as follows:

Rob Cook, Executive Officer  
Lori L. Morgan, Deputy Executive Officer  
Katrina Valentine, Assistant Executive Officer

Representatives of the Department of General Services, Office of Public School Construction (OPSC), were as follows:

Rob Cook, Executive Officer  
Lori L. Morgan, Deputy Executive Officer

Representative of the Department of General Services, Office of Legal Services, was as follows:

Henry D. Nanjo, Assistant Chief Counsel

With a quorum present, Tom Sheehy, Chair, called the meeting to order at 2:07 p.m.

Since this SAB meeting would be the last meeting that Senators Margett, Scott, and Assembly Member Mullin would be attending, the Chair asked the Executive Officer, Rob Cook, and the Deputy Executive Officer, Lori Morgan, to present the SAB Resolutions to Senator Margett and Assembly Member Mullin. Both members were thanked by Rob and Lori for their dedication, support, and professionalism. The Chair presented a SAB Resolution to Senator Scott and thanked him for his support as Vice Chair to the SAB, as well as his contributions made to the State of California as a member of the SAB.

**PRIOR MINUTES**

A motion was made and carried to approve the Minutes for the September 24, 2008 SAB meeting. However, Ms. Girard, Assembly Member Mullin, and Mr. Harvey abstained from voting on the motion since they were not in attendance at the September SAB meeting.

**EXECUTIVE OFFICER'S STATEMENT**

The Executive Officer informed the Board of the following:

**Assembly Bill 1014**

The OPSC was pleased to announce that the Office of Administrative Law approved the regulations implementing the provisions of Assembly Bill 1014 [Chapter 691, Statutes of 2007, (Bass)] with an effective date of October 21, 2008. The regulations provide new options for new construction eligibility enrollment projections and allow school districts to use the following additional components:

- Modified weighting mechanisms
- Birthrate augmentation to kindergarten and first grade enrollment
- Tenth-year projection
- Utilization of pupil residence for High School Attendance Area reporting.

A letter was sent to all school districts and county offices of education announcing the approval and the regulations, along with the revised forms, were posted on the OPSC Web site. School districts were reminded that if they wish to utilize the new regulations for the 2007/2008 California Basic Educational Data System enrollment year, complete applications must be accepted by the OPSC on or before October 31, 2008. The Executive Officer stated that the OPSC would remain open until 5:30 p.m. on October 31, 2008 to allow school districts to bring in their updated information before the deadline.

**Charter School Facilities Program**

It was stated that the remaining Charter School Facilities Program final conversion application funded from Proposition 47 was included in this Agenda.

Of the total six projects that received preliminary apportionments from the \$97 million available, three successfully converted to a final apportionment and three charter schools elected to rescind their applications. Of the \$61.8 million remaining in the Proposition 47 Charter School Facilities Fund, the regulations reserve \$15.6 million for the 2002 Conversion Increase Fund. This leaves an unused balance of approximately \$46.2 million. The OPSC intends to report back to the Board at a future SAB meeting on the legal limitations for the use of these remaining funds.

A Board member asked why charter schools that receive funding do not follow through on their applications. The Executive Officer responded that there are a number of reasons why charters have issues converting in this program; one reason is that some charters are not used to the requirements that come with this program (i.e., going through the CDE, the Division of the State Architect, and then through SAB/OPSC). Another reason is that charter schools are required to enter into agreements with their local school districts and in some instances, it has been very difficult to obtain those agreements, and lastly, charter schools must go through a financial soundness test to ensure viability.

**EXECUTIVE OFFICER'S STATEMENT** (cont.)**Career Technical Education Facilities Program**

Proposition 1D established the Career Technical Education Facilities Program and allocated \$500 million to provide qualifying school districts and joint powers authorities the opportunity to construct new facilities or to reconfigure existing facilities to integrate career technical education programs into their high schools. It is anticipated that the second round of funding from this allocation will be presented at the December 2008 SAB meeting for approximately 285 applications totaling an estimated \$284.9 million.

**November/December Board Meeting**

The November/December Board meeting is scheduled for December 10, 2008. The meeting will be held in conjunction with the Green California Schools Summit in Anaheim. Its start time and further information will become available through the 10-day public notice and will be posted on the OPSC Web site.

**CONSENT ITEMS**

A motion was made, and carried, that the Board approve the Consent calendar as presented.

**FINANCIAL REPORTS*****Status of Funds***

The Deputy Executive Officer presented the Status of Funds to the Board and noted that the Board approved and/or authorized \$225 million in apportionments representing about 330 applications. The Board accepted the Status of Funds report as presented.

***Administrative Costs for Fiscal Year 2008/2009***

A Board member asked about the percentage fee for overhead that the DGS charges the OPSC and inquired what was included in the overhead. The Executive Officer responded that information technology support, human resources support, some budget support, and legal services support is included in the overhead cost. In considering this item, the Board approved the staff's recommendations.

**SPECIAL CONSENT ITEMS*****San Bruno Park Elementary/San Mateo 93/69013-00-00***

In considering this item, the Board approved the staff's recommendations.

***Deferred Maintenance Program Extreme Hardship Project Time Extension***

In considering this item, the Board approved the staff's recommendation.

**SPECIAL CONSENT ITEMS** (cont.)***Bass Lake Joint Union Elementary/Madera 51/65185-00-01***

Mr. Glen Reid, Superintendent of the Bass Lake Joint Union Elementary School District, addressed the Board to thank staff and to reassure the Board that the District would be pursuing financial support from Madera County for the costs associated with the mitigation of the health and safety concerns (i.e., deceleration lane, traffic light, etc.). The Deputy Executive Officer clarified that this project entailed several different funding sources and that this facility hardship project conceptual approval is only for the minimum work necessary to mitigate the health and safety concerns. It was further clarified that if additional work and/or excessive costs resulted from the final plans, a discussion item would be brought forth to the Board at that time. In considering this item, the Board approved the staff's recommendations.

***Nuestro Elementary/Sutter 58/71423-00-001***

In considering this item, the Board approved the staff's recommendations.

**SPECIALS/APPEALS*****State Relocatable Classroom Program Automatic Lease Extensions***

The Deputy Executive Officer presented the item to the Board. In considering this item, the Board approved the staff's recommendations.

***Recommendations for Prior Bond Funds Available for Transfer***

Ms. Sue Reese, representing the SAB staff, presented the item to the Board. Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH) organization, addressed the Board regarding if these funds were transferred for facility hardship whether there was a limit being placed on health and safety project funding. The Deputy Executive Officer stated that these transferred funds would not be the limit. There was much discussion surrounding the potential transfer; some Board members wanted to set aside portions of the funding for seismic retrofit, new construction, and/or health and safety projects. A motion was made, and carried, to wait four months until the February 2009 SAB meeting and report back with recommendations on the status of the various programs.

***Material Inaccuracy***

Mr. Rick Asbell, representing the SAB staff, presented the item to the Board. The following individuals addressed the Board in disagreement with the guidelines for Scenario #3, and expressed concern regarding the regulations alignment with the statutory language as well as concerns that the regulation was being retroactively applied:

- Ms. Ruth Quinto, Chief Financial Officer, Fresno Unified School District;
- Ms. Mary Beth DeGoede, of the law firm of DeGoede, Dunn & Martin;
- Ms. Margie Brown, Assistant Superintendent for Facilities, San Ramon Valley Unified School District;
- Mr. Terry Tao, of the law firm of Atkinson & Andelson; and
- Ms. Susan Wright, representing NTD Architecture.

**SPECIAL/APPEALS** (cont.)

***Material Inaccuracy*** (cont.)

The Board was in agreement with Scenarios #1 and #2 but did not come to any conclusions regarding Scenario #3 (the duration of interest calculation for invalid projects/fund releases). The Board's Legal Counsel and the Deputy Executive Officer stated: 1) that the material inaccuracy regulations provide some minor clarifications but that the existing statute provided sufficient framework for the Board to immediately implement the provisions spelled out in law; 2) that the primary statute that would have been violated for an invalid project/fund release (Scenario #3) is the program's originating statute [Senate Bill 50, Chapter 407, Statutes of 1998] that became effective in August 1998; and 3) that the referenced term "or" gave the Board the flexibility to define the loss of self-certification in regulation. While there was much discussion regarding this item, the Board did not take action concerning Scenario #3 and requested staff to agendize for discussion at a future SAB meeting to discuss the issues of when statute and regulations are implementing provisions, and to discuss when they take effect.

***Los Angeles Unified/Los Angeles 50/64733-00-119, 123, 127 and 131***

The Executive Officer and Ms. Toni Martinez, representing the SAB staff, presented this item to the Board. Mr. Lyle Smoot, representing the Los Angeles Unified School District, addressed the Board and contended that the application (timing) of the 150 percent rule changed without advising the school districts. Mr. Tom Duffy, representing the CASH organization, addressed the Board not on the appeal but on the 150 percent issue. He thanked the Board for sending the issue to the Implementation Committee for further vetting. After much discussion, a motion was made to reject staff's Recommendation No. 1, which was to deny the District's appeal. The Chair requested a roll-call vote and the motion failed per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Margett	X			
Senator Scott		X		
Senator Simitian		X		
Assembly Member Mullin	X			
Assembly Member Fuller		X		
Assembly Member Brownley	X			
Scott Harvey		X		
Kathleen Moore	X			
Rosario Girard		X		
Tom Sheehy		X		
Total	4	6		

**Motion:**

Carried       
 Failed   X

**SPECIAL/APPEALS** (cont.)***Los Angeles Unified/Los Angeles*** (cont.)

Another motion was made to approve staff's Recommendation No. 1, which was to deny the District's appeal. The Chair requested a roll-call vote and the motion carried per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Margett		X		
Senator Scott	X			
Senator Simitian	X			
Assembly Member Mullin		X		
Assembly Member Fuller	X			
Assembly Member Brownley		X		
Scott Harvey	X			
Kathleen Moore		X		
Rosario Girard	X			
Tom Sheehy	X			
Total	6	4		

**Motion:**

Carried  X   
Failed      

***Davis Joint Unified/Yolo 50/72678-00-006***

This item was withdrawn by the OPSC.

**REPORTS*****Seismic Mitigation Program Update***

This item was postponed to the December 2008 SAB meeting.

***Legislative Update***

This item was postponed to the December 2008 SAB meeting.

**INFORMATION/REFERENCE*****Remaining SAB Meeting Date for the Calendar Year 2008******School Facility Program Workload List - Applications Received Through October 9, 2008******Emergency Repair Program – Applications Received Through October 7, 2008******Deferred Maintenance Program Unfunded List as of September 24, 2008******Facility Hardship/Rehabilitation Approvals Without Funding List as of September 24, 2008***

**CLOSED SESSIONS**

At 4:55 p.m. and in accordance with Section 11126(a)(1) of the Government Code, the Board convened into closed session for the purpose of discussing a matter relating to personnel. Additionally, in accordance with Section 11126(e)(1) of the Government Code, the Board met in closed session for the purpose of conferring with and receiving advice from counsel regarding *Fresno Unified School District v. SAB/DGS et al.*; Case No. 08CECG01393 DRF. Further, in accordance with Section 11126(e)(1) of the Government Code, the Board met in closed session for the purpose of conferring with and receiving advice from counsel regarding potential litigation.

The Board continued the closed session relating to potential litigation to November 10, 2008 and reconvened into open session at 6:38 p.m.

**PUBLIC COMMENT**

Mr. John Peukert, Assistant Superintendent of Facilities for the San Bernardino City Unified School District, addressed the Board and thanked the OPSC staff for releasing the funding for the financial hardship projects quickly and appropriately. He also provided an update on the status and impact of the District's financial hardship projects thus far.

**ADJOURNMENT**

There being no further business to come before the Board, the Chair recessed the meeting at 6:41 p.m.

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**ROB COOK, Executive Officer**