

**MINUTES**  
**State Allocation Board**  
**January 28, 2009**

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 January 28, 2009 at 4:00 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
- 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 Alan Lowenthal
- Senator Loni Hancock
- Senator Mark Wyland
- Assembly Member Jean Fuller
- Assembly Member Julia Brownley
- Assembly Member Tom Torlakson

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 4:05 p.m.

The Chair introduced and welcomed Senator Loni Hancock as the newest member of the SAB.

**PRIOR MINUTES**

A motion was made and carried to approve the Minutes for the December 10, 2008 SAB meeting. A second motion was made to approve the Minutes for the January 14, 2009 SAB meeting; however, the Board requested that staff make an amendment to those Minutes to include the clarification that the "School Facility Program Financial Crisis Emergency Regulations" item that addressed the 18-month time limit on apportionment was broad enough to extend to the other programs, such as the Career Technical Education Facilities Program. The January 14, 2009 Minutes will be presented for approval at the February 25, 2009 SAB meeting.

## **EXECUTIVE OFFICER'S STATEMENT**

The Executive Officer informed the Board of the following:

### Regulation Update

The Office of Administrative Law approved regulations amending the Overcrowding Relief Grant Program on January 21, 2009. The amended regulations allow advance fund releases for site acquisition when condemnation proceedings are involved. The regulations are available on the OPSC Web site.

### Federal Stimulus Package

The House of Representatives' proposed economic stimulus package, H.R.1, was introduced on January 28, 2009 and is currently going through the federal legislative process. In its current form, the bill would allocate \$14 billion for school facility modernization nationwide. California's share is estimated to be approximately \$1.7 billion. The U.S. Senate is currently developing its own economic stimulus package, which would include school facility funds and is expected to be introduced next week. At the December 10, 2008 SAB meeting, the Board requested staff to report on whether the Federal Renovation Program Regulations could be used for any federal economic stimulus package. These regulations would not be applicable to H.R.1; however, H.R.1 does include some program provisions that would require regulations or some type of program mechanism to ensure compliance and redistribution of funds to eligible school districts. The goal is to have the economic stimulus bill passed by both houses and sent to the President by mid-February. The OPSC will continue to monitor this legislation in an effort to stand ready to assist in the administration of these funds, if needed.

### Deferred Maintenance Program

The Deferred Maintenance Program annual funding item which is usually presented at the December SAB meetings has been postponed due to pending budget action that may change the allocation and use of these funds. The OPSC will bring an item forward once the budget action has been decided.

*In response to the Executive Officer's comment, the Board requested that staff agendaize the Deferred Maintenance Program funding item and present it to the Board at the February 25, 2009 SAB meeting.*

### State Allocation Board Meeting Scheduling Change

Due to scheduled Legislative hearings in the large hearing rooms, the Board may want to consider changing the date of the SAB meetings from the fourth Wednesday of each month to the fourth Thursday. This change will allow the larger rooms to be reserved to accommodate more seating for attendees. The OPSC is also proposing that the meetings begin at 1:30 p.m.

*In response to the Executive Officer's comment, the Chair requested that staff explore other venues for when the large meeting rooms are not available and to report back at the next meeting.*

**CONSENT ITEMS**

In considering the Consent calendar, the Board requested that the Murrieta Valley Unified School District item, page 38, be removed from the Consent calendar, without prejudice, and requested staff to present an item at the February 25, 2009 SAB meeting. The Board was interested in the events that resulted in the District's self-correction. The Board approved the Consent calendar, with the exception of the item for Murrieta Valley Unified School District. A Board member requested clarification, which was provided during the meeting, regarding the close-out Consent item, page 51, for the Tulare Joint Union High School District. In addition, Ms. Moore abstained from voting on the Elk Grove Unified School District's item but voted to approve all others.

**STATUS OF FUNDS**

The Deputy Executive Officer presented the Status of Funds to the Board. It was stated that the only apportionments made would be for the Emergency Repair Program in the amount of \$11.3 million, and that there remains approximately \$5.3 billion in State bond authority for the other Board programs. The Board brought up the issue of remaining funds in the Charter School Facilities Program category and inquired that after holding an appropriate reserve for projects yet to be perfected, as to whether funding could be provided to other eligible charter school projects so that every available dollar can be apportioned. It was requested that some suggestions on this topic be presented at a future SAB meeting. The Board accepted the Status of Funds report as presented.

**SPECIAL CONSENT ITEMS**

***Oak Grove Elementary/Santa Clara 93/69625-00-00***

The Deputy Executive Officer presented this item to the Board. A Board member inquired about the public policy reason as to why the \$20 million hardship assistance reduction includes seismic funding. It was clarified that the authorizing special legislation included those conditions. The Chair requested a roll-call vote and the motion, which was to approve the staff's recommendations, carried per the following votes:

<b>MEMBER</b>	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Senator Lowenthal	X			
Senator Hancock	X			
Senator Wyland				X
Assembly Member Fuller	X			
Assembly Member Brownley			X	
Assembly Member Torlakson	X			
Scott Harvey	X			
Kathleen Moore	X			
Rosario Girard	X			
Tom Sheehy	X			
<b>Total</b>	<b>8</b>		<b>1</b>	<b>1</b>

**Motion:**

Carried   X    
 Failed

**SPECIALS/APPEALS*****Monsenor Oscar Romero Charter/Los Angeles 54/64733-00-057***

Mr. Juan Mireles and Ms. Barbara Kampmeiner, representing the SAB staff, presented this item to the Board. Ms. Ana Cubas, President and founder of the Monsenor Oscar Romero Charter School, addressed the Board and stated that she was not asking to change the rules or defund the other projects, but wanted the Board to consider opening a subsequent funding cycle or pursue other funding possibilities that would accommodate the revised application for those schools that have actual free and reduce priced lunch data. In considering this item, the Board approved the staff's recommendation, which was to deny the Charter School's request. In addition, the Board requested that staff prepare a report for the April SAB meeting and provide options/recommendations concerning the allocation of the remaining \$24 million in the Charter School Facilities Program; does the Board retain the funding as a buffer for the projects that have not converted to a final apportionment and/or should the Board consider a future funding round utilizing some or all of those funds.

***San Bernardino City Unified/San Bernardino 56/67876-00-003***

Mr. Rick Asbell, representing the SAB staff, presented this item to the Board. The following individuals addressed the Board in support of the Middle College High School request:

- Assembly Member Wilmer Amina Carter;
- Mr. John Peukert, Assistant Superintendent of Facilities; and
- Mr. Terry Tao, legal counsel for the District.

There was much discussion surrounding the issues of program integrity. To ensure program integrity in alignment with the bond covenants and that there would be no duplication of funding, staff had previously presented three options to the District: 1) rescind the new construction apportionments for site and design; 2) reduce the new construction site and design apportionment to costs incurred and resubmit a new Overcrowding Relief Grant (ORG) application; and 3) continue to pursue the project under the School Facility Program (SFP) new construction program, with no ORG application. The Board expressed concerns regarding the issues of double funding and with grandfathering in or extending the financial hardship approval for the District. A proposal was put forth by the Chair that would provide ORG funding for the District if the staff could identify the overlap of the double funding and offset it, contingent upon the District reapplying under the ORG Program, which would include reapplying for its financial hardship status and review of any potential District contribution. This proposal, if adopted by the Board, would require staff to prepare regulations to enable the ORG apportionment offset.

The Board continued to discuss the District's appeal and asked that the District's legal counsel to attach the materials to the record acknowledging the materials represent the District's argument rather than to have the District's legal counsel read all the materials into the record. The District's legal counsel was in agreement. A substitute motion was made that would approve the staff's recommendation, which was to deny the District's request. The Chair requested a roll-call vote for the substitute motion and the motion failed per the following votes:

**SPECIALS/APPEALS** (cont.)

***San Bernardino City Unified/San Bernardino 56/67876-00-003*** (cont.)

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal		X		
Senator Hancock		X		
Senator Wyland				X
Assembly Member Fuller				X
Assembly Member Brownley		X		
Assembly Member Torlakson		X		
Scott Harvey	X			
Kathleen Moore		X		
Rosario Girard	X			
Tom Sheehy	X			
Total	3	5		2

**Motion:**

Carried       
 Failed   X  

After further discussion and a ten minute recess, a proposed motion was made and stated “the Board finds that the District’s Overcrowding Relief Grant (ORG application) application submitted to OPSC in July 2008 is valid. Further, the staff shall utilize the calculation described in Regulation 1859.81.1(e), [the deduction of the amount received for a project designed in the preliminary apportionments from the construction grant], to determine the amount of the ORG grant.” In other words, have the SAB make a finding that the returned application is still valid and that the calculation that is described in the SFP regulation section for site and design is utilized to determine the amount that should be offset from the ORG grant to eliminate the “double funding” of site acquisition and design which the District received under the SFP for new construction. The motion was seconded and further discussed. The Chair requested a roll-call vote for the proposed motion and the motion failed per the following votes:

MEMBER	AYE	NAY	ABSTAIN	ABSENT
Senator Lowenthal	X			
Senator Hancock	X			
Senator Wyland				X
Assembly Member Fuller				X
Assembly Member Brownley	X			
Assembly Member Torlakson	X			
Scott Harvey		X		
Kathleen Moore	X			
Rosario Girard				X
Tom Sheehy		X		
Total	5	2		3

**Motion:**

Carried       
 Failed   X  

Because the proposed motion failed, the Board requested staff to reschedule this item for the February 25, 2009 SAB meeting.

**REGULATIONS*****School Facility Program Financial Crisis Emergency Regulations***

Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH) organization, addressed the Board in support of the proposed regulations. He also provided input concerning the potential streamlining of financial hardship processes regarding the six-month approval and the substantial progress 18-month return after fund release approval, as well as financing and interfund borrowing. The Board asked whether financial hardship districts are required to return project savings to the State and not be able to utilize these savings on other construction projects. It was stated that the current financial hardship regulations allow for this ability. The Board requested that the financial hardship issues be reviewed and returned to a future Board for discussion. The Executive Officer responded that staff would be happy to review it and return it to the Board with the overall regulatory framework. A Board member commented that the financial hardship regulations have been discussed at the Implementation Committee meeting for quite a long time and requested that even if there is no consensus that the regulations be brought forward to this forum so that the Board can take action. Mr. Ernie Silva, representing the Gateway Community Charters, addressed the Board in support of the proposed regulations. In considering this item, the Board approved the staff's recommendations, including deferring the Career Technical Education Facilities and Joint-Use Programs regulatory language to the February 25, 2009 SAB meeting. The Chair reiterated the commitment to the Board that if a Board member wished to revisit the regulations as they related to the availability of funds and the interaction between the Pooled Money Investment Board (PMIB) and the SAB roles, the regulations would be revisited.

**REPORTS*****Report on the State of California's Access to the Bond Market***

Mr. Paul Rosenstiel, Deputy Treasurer, representing the State Treasurer's Office (STO), provided the Board and the audience with an update on the prospects for getting back into the State bond market. He indicated that the State has been unable to issue State general obligation bonds since June because of the State budget situation and the capital markets have been very difficult to get investors interested. The DOF, the STO, the State Controller's Office (SCO), and the Attorney General's Office have been working on getting the State of California back in the market. He stated that they are branching out to find non-traditional investors who would not normally buy State bonds to buy State bonds for a short period of time, and that institutional investors are just not investing. It was stated that there is \$8 billion that needs to be reimbursed to the Pooled Money Investment Fund (PMIF) for projects that have already been funded, along with several hundred million dollars a month of additional new spending that is going to happen. So for the State of California to play catch up by the end of the fiscal year would require at least \$12 billion in issuances. That amount would be the largest number we have ever done (issued).

Mr. Rosenstiel indicated that currently we have \$1.3 billion of commercial paper outstanding because we finance a lot with commercial paper and most of that is at an interest rate of nine and one-half percent. The legal maximum is 11 percent. He indicated that they are not happy with the nine and one-half percent; however, they have no choice because they cannot issue long-term fixed rate bonds. It was also indicated that although California has the lowest rating of any state in the country, California's bonds are not junk market status. Bonds are issued according to each specific Bond Act and then that money is used to reimburse the PMIF. Once the PMIF has the money, it can turn around and make new loans. It was also stated that the DOF staff has evaluated every single one of the capital outlay projects that has been affected by the freeze and has also looked at the impact of penalty rates (are there shutdown costs, etc.). In addition, there are 5,700 individual projects that have been affected by this freeze and, in some cases, a determination was made to continue with those projects because the shutdown costs were too great. It was clarified

**REPORTS** (cont.)***Report on the State of California's Access to the Bond Market*** (cont.)

that the SCO makes the decision on who gets paid first. The Director of Finance has indicated that all projects would be shut down as of February 1, 2009 if there was no budget resolution. The Board thanked Mr. Rosenstiel for providing the information and asked that he relay to the Treasurer to consider making education (schools) a true priority to receive the funding.

***Financial Crisis Impacts to School Facility Program Projects***

The Executive Officer presented this item to the Board. He explained that staff has been actively capturing and compiling the information related to the \$2.4 billion in SAB-approved apportionments since December 17, 2008, and the information has been provided to the PMIB, the DOF, and the SAB. There are 250 districts, 866 projects, and \$2.4 billion in funding, and the data on the report is self-reported. The primary information in the report identifies projects in the following manner:

- financial hardship;
- which projects have contracts in place;
- which projects are under construction;
- projects that have identified whether they can proceed with or without State funding;
- projects that are planning to cancel contracts;
- project shutdown costs; and
- estimated damages that may be incurred.

Mr. Tom Duffy, representing the CASH organization, addressed the Board and asked that the Implementation Committee agendaize this item so school districts could provide input. Mr. Ron Hudson, Deputy Superintendent of the Kings Canyon Unified School District, addressed the Board and requested that the SAB exempt school districts from the December 17, 2008 disbursement freeze and release funds to the school districts that did submit the Form SAB 50-05 fund release request along with the signed contracts and notices to proceed and commenced construction prior to December 17, 2008. Mr. Stephen Foster, representing the Chawanakee Unified School District, provided clarification with regard to the information in the report (question posed to their district was will you proceed versus can you proceed). He clarified that since the district was a financial hardship district, the district had no choice but to continue proceeding with the project because the litigation costs for stopping the project would be more than proceeding with it.

The Board requested that the Executive Officer, the Deputy Executive Officer, or the Assistant Executive Officer represent before the PMIB the situation that the school districts are in, particularly those that are under contract, and provide the PMIB the information of shutdown costs and estimated damages like other agencies have done. In considering this item, the Board accepted the report.

***School Facility Program Unfunded Approvals***

The Executive Officer presented this item to the Board. Mr. Tom Duffy, representing the CASH organization, addressed the Board in support of this issue. The Board accepted the report and requested that staff agendaize this issue for vetting at the Implementation Committee meeting. Further, the Board requested that an action item be presented at the February 25, 2009 SAB meeting and present recommendations on the \$2.4 billion in unfunded apportionments approved by the Board. In addition, the Board requested that staff find out when the next PMIB meeting will be

**REPORTS** (cont.)***School Facility Program Unfunded Approvals*** (cont.)

held and notify all the SAB members and post the notification on the OPSC Web site so that other interested parties are aware. A Board member reiterated the need to have representation at the PMIB meeting.

**INFORMATION/REFERENCE*****SAB Meeting Dates for the Calendar Year 2009******School Facility Program Workload List - Applications Received Through December 24, 2008******Deferred Maintenance Program Unfunded List as of December 10, 2008******Emergency Repair Program – Applications Received Through December 23, 2008******Facility Hardship/Rehabilitation Approvals Without Funding List as of December 10, 2008*****MISCELLANEOUS**

The Chair announced that the Senate Sergeant, Mr. Tony Beard, believes that the SAB is potentially creating an Open Meetings Act problem because the State Capitol officially closes at 6:00 p.m. and this meeting is not yet adjourned. The Board asked staff to try to find alternative locations to hold the SAB meetings and to consider if the SAB meetings can start sooner.

A Board member requested staff to investigate the potential cost impact (i.e., shutdown, litigation costs, etc.) for the projects that have received SAB apportionments that cannot at this point be released (\$2.4 billion). The member expressed interest in discussing recommendations for the Board around these issues. The Executive Officer responded that staff has been actively attempting to capture the cost information from the school districts, which has been and will continue to be provided to the PMIB and the DOF. The information collected to date is before the SAB today. The Executive Officer clarified that depending on how long this situation lasts, any resolution as being suggested would have to be enacted through the Legislature. Under current law, the Board does not have that ability, and those projects have received their full and final apportionments.

**PUBLIC COMMENT**

Mr. Tom Duffy, representing the CASH organization, addressed the Board on the following issues:

- Construction Cost Index (CCI);
- general site development allowance that expired;
- AB 127 adjustment;
- Seismic Mitigation Program regulations; and
- High Performance

The Board requested that the CCI, general site development allowance, and the AB 127 adjustment be presented to the Board at the February 25, 2009 SAB meeting and that it be presented in a format that lays out all of the adjustments so the Board can see the entire funding picture. In addition, staff was asked to look at the CCI to ensure that the correct CCI adjustment will be applied since construction bids are dropping dramatically in the State.

**ADJOURNMENT**

There being no further business to come before the Board, the Chair adjourned the meeting at 8:15 p.m.

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**ROB COOK, Executive Officer**