

MINUTES
State Allocation Board
February 25, 2009

Upon notice duly given, the monthly meeting of the State Allocation Board was held in Room 4202 of the State Capitol in Sacramento, California on February 25, 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 4:11 p.m.

PRIOR MINUTES

A motion was made and carried to approve the Minutes for the January 14 and 28, 2009 SAB meetings.

EXECUTIVE OFFICER'S STATEMENT

The Executive Officer informed the Board of the following:

Pooled Money Investment Board Update

On February 18, 2009, the Pooled Money Investment Board (PMIB) met and discussed the ability of the State to sell bonds. Treasurer Lockyer indicated that the Pooled Money Investment Account was owed approximately \$7 billion from infrastructure bonds with outstanding Assembly Bill 55 loans. The Treasurer stated that he could not sell \$7 billion in bonds in the next year. The Executive Officer stated that he addressed the PMIB on behalf of the SAB, and informed the PMIB that the SAB would do its part in prioritizing projects so that the OPSC would be ready to move forward once funding becomes available. The next PMIB meeting is scheduled for March 18, 2009.

The Board requested that staff develop a letter before the end of the week for the SAB members' signatures addressed to the State Treasurer's Office, the Department of Finance, and the State Controller's Office urging the selling of bonds, release of State funds, and that schools be the highest priority.

Recent Budget Bills Impact on School Facility Programs

The enactment of two recent budget bills, SBX3 4 and SBX2 9, will impact some of the SAB Programs:

- **Emergency Repair Program:** SBX3 4 maintains its original appropriation of \$101 million for the Emergency Repair Program (ERP) for the current year budget and eliminates ERP funding for 2009/10 Fiscal Year.
- **Deferred Maintenance Program:** SBX3 4 reduces the Deferred Maintenance Program (DMP) funding for 2008/09 and 2009/10 and provides authority for local educational agencies (LEAs) to use funding from specified categorical programs for any educational purpose which includes the Deferred Maintenance account. It also reduces the school districts' deposit requirement for their Restricted Routine Maintenance Account for five years and eliminates the reporting requirements for LEAs that do not meet the required level of funding into their Deferred Maintenance account for five years.

Additionally, the DMP item scheduled for this Board meeting may need to be postponed in order for staff to recalculate the State's maximum basic match requirement based on the reduced funding enacted in SBX3 4.

- **Labor Compliance Program:** SBX2 9 requires the Department of Industrial Relations (DIR) to administer Labor Compliance Programs (LCP) and assess a fee to cover their costs. Public works projects funded from any State bonds, as specified, are subject to this fee; however, only projects funded by Propositions 47 and 55 that have contracts signed after the effective date of this statute will be subject to the fee. For applicable projects funded out of Propositions 47 and 55, the bill waives the "full and final" provision and authorizes the SAB to provide grant funding amounts to cover this fee. The bill is not operable until the DIR adopts regulations to implement the program and determines the fee.

At this time, the OPSC has not completed an assessment of the full program impact; however, regulatory amendments will most likely be needed to accommodate the provision which allows LEAs to use DMP funds for other educational purposes, which is in conflict with current ERP and DMP regulations.

EXECUTIVE OFFICER'S STATEMENT (cont.)**Emergency Repair Program Funding Update**

There is approximately \$50 million available in the Proposition 98 Reversion Account. The CDE has been working with the State Controller's Office to affect the transfer. The OPSC appreciates their assistance in obtaining additional funding for these health and safety projects.

The Board requested staff to look into having the Proposition 98 Reversion Account funds released as the funds become available.

CONSENT ITEMS

The Board approved the Consent calendar as presented. In addition, Ms. Moore abstained from voting on Elk Grove Unified School District items but voted to approve all others.

STATUS OF FUNDS

The Deputy Executive Officer presented the Status of Funds to the Board. The Board accepted the Status of Funds report as presented.

SPECIAL CONSENT ITEMS***Alpaugh Unified/Tulare 51/71803-00-001***

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

Alpaugh Unified/Tulare 51/71803-00-002

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

Deferred Maintenance Program Funding

The Executive Officer presented this item to the Board. The following individuals addressed the Board concerning this item:

- Ms. Jeannie Oropeza, representing the DOF;
- Mr. Dave Walrath, representing the Small School Districts Association;
- Mr. Jim Patton, representing the Anderson Valley Unified School District; and
- Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH) organization.

Ms. Oropeza informed the Board that the DMP funding was set up as categorical block grants (flexibility pot) under the newly enacted legislation, SBX3 4, and stated that the distribution of the DMP funding will determine the amount of funding for school districts for the current and next four years. She also indicated that the school districts could spend the funding on anything and that there was no deposit requirement.

Mr. Duffy commented that he would communicate to the school districts that the annual funding amounts received from the DMP would be the same over the next four years.

SPECIAL CONSENT ITEMS (cont.)***Deferred Maintenance Program Funding*** (cont.)

The Board expressed concerns regarding the funding (\$23.4 million) for extreme hardship projects. The Deputy Executive Officer responded that if the Board approved the funding as presented that reflects the recently revised DMP appropriation, five school district projects that were previously published in the agenda would not receive extreme hardship funding (Pierce Joint Unified School District, page 104; Anderson Valley Unified School District, page 119; Fort Bragg Unified School District, page 120; Pleasant View Elementary School District, page 146; and Wheatland Elementary School District, page 153). These five projects would then be placed at the top of the DMP Unfunded List.

Mr. Patton addressed the Board in support of the Anderson Valley Unified School District's extreme hardship project.

Mr. Walrath commented that in the future the Board should consider agendizing the annual DMP funding item in July rather than the end of the calendar year.

In considering this item, the Board approved the staff's Recommendations 1, 2, and 3 and did not approve staff Recommendations 4 and 5. Instead, the Board requested that staff bring back funding options that address the ten percent funding for extreme hardship projects at the next available SAB meeting.

Transfer of Critically Overcrowded Schools Program Funds

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

General Obligation Bond Report

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

SPECIALS/APPEALS***School Facility Program Fund Releases***

Ms. Katrina Valentine presented this item to the Board. The following individuals addressed the Board concerning this issue:

- Mr. Bruce Hancock, representing Hancock, Gonos and Park;
- Mr. Bill Savage, representing the CASH organization;
- Mr. Tom Duffy, representing the CASH organization;
- Mr. Dave Walrath, representing the Small School Districts Association;
- Mr. Mark Garza, representing the Kings Canyon Unified School District; and
- Dr. Stephen Foster, representing the Chawanakee Unified School District.

There was discussion concerning legislative and/or regulatory remedies for fund release prioritization. Mr. Hancock addressed the Board and indicated that there was no law or regulation

that directs or governs fund releases and that there would be no need to make legislative or regulatory changes.
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SPECIALS/APPEALS (cont.)

School Facility Program Fund Releases (cont.)

Mr. Duffy addressed the Board and indicated that the statutory structure for fund releases should be identical to that for funding – on a first-come, first-served basis. Mr. Bill Savidge requested that the Board not abandon date order, but look at unusual circumstances.

Mr. Walrath addressed the Board and stated that he appreciates the concept for project prioritization. He stated that the SAB should ask the PMIB to consider date certain commitments, meaning that every six, nine, or 12 months have a specific amount of funding available to fund some projects. This would enable school districts to have assurances which would enhance their ability to obtain local money in the interim.

Mr. Garza addressed the Board and requested that the Board look at projects that have shut down because of the inability to proceed without the State's share of funding (50 percent) and encourages the priority list. Dr. Stephen Foster addressed the Board and stated that the District is facing litigation and appreciates the Board's support.

In discussing this issue, the Board requested staff to prepare a letter for the PMIB that strongly advocates the release of funds to school districts for School Facility Program (SFP) projects as soon as possible and urge the sale of bonds. The Board also indicated that the letter should request a commitment from the PMIB of a certain amount of funding within a certain amount of time to assist in the prioritization of projects.

In considering this item, the Board approved staff's recommendation to address this matter at the Implementation Committee and requested that the following issues be explored:

- Determine the best policy for prioritizing fund releases should funds become available based on actions taken by the PMIB;
- Determine whether regulatory and/or statutory amendments are required to make changes to the fund release priorities; and

The Board requested that staff report back at a future SAB meeting.

Adjustments to School Facility Program Grants

The Executive Officer presented this item to the Board and requested that the Board approve the staff's recommendations, including the date change in Recommendation No. 3 to extend the General Site Development additional grant to January 1, 2010 rather than December 31, 2009. Mr. Tom Duffy, representing the CASH organization, addressed the Board in support of this item. A motion was made to approve the staff's recommendations, including that date change. The Chair requested a roll-call vote for the motion and the motion carried per the following votes:

SPECIALS/APPEALS (cont.)***Adjustments to School Facility Program Grants*** (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	7	2		1

Motion:Carried X Failed

In addition, the Board requested that the six percent grant adjustment provided through Assembly Bill 127 be discussed at the April 2009 Implementation Committee meeting so the Board can address the issue at a future SAB meeting.

School Facility Program Career Technical Education Facilities Program Funding Cycle

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

Department of Finance, Office of State Audits and Evaluations Report

Mr. David Botelho, Chief of Office of State Audits and Evaluations (OSAE), and Ms. Mary Kelly, addressed the Board regarding the OSAE report and indicated that this was not an audit report. The OSAE looked at the assignment of fiscal responsibilities within the OPSC and noted concerns with the internal control environment.

Mr. Tom Duffy, representing the CASH organization, addressed the Board and expressed his concerns with the report. Ms. Kathleen Moore read into the record a letter written by the Superintendent of Public Instruction that disagrees with the OSAE report. Further, Senator Lowenthal stated that he did not support the report and felt it was an attack on the State Legislature and the SAB.

In considering this item, the Board received the report only. In addition, a motion was made and carried that the Board establish two sub-committees to include three members of the Board:

- The first sub-committee shall convene to review the scope of the OPSC's auditing authority; and
- The second sub-committee shall convene to develop rules and procedures recommended for the SAB.

The SAB's legal counsel indicated that both sub-committees would be subject to the Bagley-Keene Open Meeting laws (public notices).

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

In considering this item, a motion was made 1) that the Board finds that the District's Overcrowding Relief Grant (ORG application) application submitted to the OPSC in July 2008 is valid; 2) make an adjustment to the ORG grants utilizing the calculation described in Regulation Section 1859.81.1(e) to offset site and design grants already received from a previously funded SFP new construction application; and 3) include the financial hardship apportionment for the projects. The Board reiterated that there shall be no duplicate site and design funding for the application deemed valid (July 2008). The Chair requested a roll-call vote for the motion and the motion carried 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	7	2	1	

Motion:

Carried X
Failed ___

Lammersville Elementary/San Joaquin 50/68551-00-00

The Executive Officer presented this item to the Board. The following individuals addressed the Board in support of this item:

- Assembly Member Joan Buchanan, representing the District; and
- Mr. Dale Hansen, (new) Superintendent of the District.

There was much discussion surrounding the unusual set of circumstances related to this item. Most of the Board expressed that even though the application form was submitted to the OPSC after the date of occupancy, the District was in substantial compliance with the statutory requirements because of the inquiry response sent to the OPSC by the District in 2006. The Executive Officer responded that the OPSC received guidance from the Attorney General's Office on this matter and the term occupancy changes the nature of a facility and its ability to access State new construction funding and, once the facility is occupied, it is no longer considered eligible for new construction. After further discussion, a motion was made to approve the District's request to submit the new construction project for funding consideration, at an estimated cost of \$4 million. The Board also requested that staff accept the District's new construction application with a received date of August 26, 2007. The Chair requested a roll-call vote for the motion and the motion carried per the following votes:

SPECIALS/APPEALS (cont.)

Lammersville Elementary/San Joaquin 50/68551-00-00 (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	9		1	

Motion:

Carried X

Failed

Unfunded Approvals for the Emergency Repair Program

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

School Facility Program Unfunded Approvals

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

Recommendations for Prior Bond Funds Available for Transfer

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

Murrieta Valley Unified/Riverside 50/75200-00-010

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

REGULATIONS

Expenditure Report Regulatory Amendments

This item was withdrawn at the request of the OPSC.

REGULATIONS (cont.)***Career Technical Education Facilities and Joint-Use School Facility Program Financial Crisis Emergency Regulations***

The Deputy Executive Officer presented this item to the Board. In considering this item, the Board approved the staff's recommendations, with the amended regulatory language as read into the record, which deleted the text "only if the district has not submitted all required plans and specifications to the DSA 30 days prior to the conclusion of the" and added "beyond the" on page 247; and deleted the text "only if the district has not submitted all required plans and specifications to the DSA 30 days prior to the conclusion of these time periods" on page 248.

REPORTS***Seismic Mitigation Program***

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

Audio/Video of State Allocation Board Meetings

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

State Allocation Board Meeting Locations

Due to time constraints, this item was postponed to the next available SAB meeting at the request of the SAB.

INFORMATION/REFERENCE***SAB Meeting Dates for the Calendar Year 2009******School Facility Program Workload List - Applications Received Through February 13 2009******Deferred Maintenance Program Unfunded List as of January 28, 2009******Emergency Repair Program – Applications Received Through December 23, 2008******Facility Hardship/Rehabilitation Approvals Without Funding List as of January 28, 2009*****MISCELLANEOUS**

The Board discussed the possibility of scheduling another Special Meeting of the SAB. A motion was made, and carried, to coordinate with the SAB members and schedule a Special Meeting of the SAB for March 11, 2009.

CLOSED SESSIONS

During the meeting, at 6:50 p.m. and in accordance with Section 11126(e)(1) of the Government Code, the Board convened into closed session for the purpose of conferring with and receiving advice from counsel regarding *San Bernardino City Unified School District v. California State Allocation Board and Office of Public School Construction*; Case No. CIVSS 816075. The Board did not, however, convene into closed session regarding *Fresno Unified School District v. SAB/DGS et al.*; Case No. 08CECG01393 DRF.

Upon conclusion of the closed session, the Board reconvened into open session at 7:02 p.m. and continued with the remainder of the public meeting.

ADJOURNMENT

There being no further business to come before the Board, the Chair adjourned the meeting at 8:05 p.m.

ROB COOK, Executive Officer