

**MINUTES**  
**State Allocation Board**  
**March 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 March 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 (DGS)
- William J. Ellerbee, Deputy Superintendent, School and District Operations Branch, 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

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 4:07 p.m.

The Chair read into the record a letter from Senator Gloria Romero congratulating the SAB on transmitting its first live webcast of an SAB meeting. The Chair thanked the Board's DGS representative, Mr. Scott Harvey, for being persistent in making government more transparent.

**PRIOR MINUTES**

The Chair announced that the Minutes for the February 25, 2009 SAB meeting would not come before the Board for approval because the transcript was unavailable to confirm the Board's actions for those items that were discussed in great detail.

**EXECUTIVE OFFICER'S STATEMENT**

The Executive Officer informed the Board of the following:

**Pooled Money Investment Board and Bond Sale Update**

On March 18, 2009, the Pooled Money Investment Board (PMIB) met and voted 3-0 to authorize up to \$500 million for some of the more than 5,000 projects caught up in the infrastructure funding freeze. The decision was contingent upon the Treasurer's Office being able to sell approximately \$4 billion in State bonds to replenish the Pooled Money Investment Account, which provides infrastructure project loans that are repaid with bond proceeds.

The Treasurer's Office is considering another bond sale next month that could generate more funding for projects hit by the freeze, but it is too early for officials to settle on an amount for that sale. The next meeting of the PMIB is scheduled for April 15, 2009.

*The Chair discussed this issue further and stated that the Administration complimented the State Treasurer for exceeding everyone's expectations by selling \$6.5 billion in State bonds. This sale will allow the PMIB to pay off \$3.8 billion in AB 55 loans, which may include funding some work previously done and address health and safety issues and maybe drought (water) needs. The Treasurer is expected to sell taxable bonds next month, including other bonds known as Build America Bonds, which are part of the stimulus package and are tax-exempt. The Chair indicated that the Build America Bonds could be used for projects that have a long life expectancy (and school construction has a long life expectancy). He also stated that the focus would be on four areas: 1) make payments for exempt projects; 2) repay bills for work already done (all types of public works projects); 3) critical health and safety projects; and 4) job creation and capturing federal stimulus funding. A Board member responded that although this is good news, the reality is that hundreds of projects will probably not receive funding. Another Board member directed the discussion to a different category of shovel-ready projects – locally-funded projects and indicated that the Division of the State Architect (DSA) is working on that authority and will be compiling a list of those projects.*

**Emergency Repair Program Funding Update**

The Executive Officer thanked the CDE, the State Controller's Office, and the DOF for affecting the transfer of approximately \$50 million from the Proposition 98 Reversion Account to the Emergency Repair Program. The OPSC appreciates the assistance in obtaining this funding for these health and safety projects.

**CONSENT ITEMS**

The Board approved the Consent calendar as presented.

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

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

**SPECIAL CONSENT ITEMS*****Pacific Unified/Monterey 58/75150-00-001***

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

***Lammersville Elementary/San Joaquin 50/68551-00-002***

The Executive Officer presented the item to the Board and stated that when this item was initially presented to the Board at the February 25, 2009 meeting, it was noted that the estimated cost to the State was in the amount of \$4 million. However, that amount was revised to an estimated unfunded approval in the amount of \$8.3 million. A motion was made to approve the District's School Facility Program (SFP) new construction project for an estimated unfunded approval for the Bethany Elementary School at a revised estimated cost to the State of \$8.3 million. 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       |        |
| Dr. Ellerbee              | X   |     |         |        |
| Rosario Girard            | X   |     |         |        |
| Tom Sheehy                |     |     | X       |        |
| Total                     | 7   |     | 2       | 1      |

**Motion:**Carried  X Failed      ***Transfer of Critically Overcrowded Schools Program Funds***

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

- Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH) organization;
- Mr. Richard Lyon, representing the California Building Industry Association (CBIA);
- Mr. Cesar Diaz, representing the State Building and Construction Trades Council (SBCTC);
- Mr. Dave Walrath, representing the Small School Districts Association (SSDA); and
- Mr. Terry Zinger, President of the Association of Labor Compliance Professionals and President of Golden State Labor Compliance.

Mr. Duffy indicated that because the Board is not making real apportionments, the CASH organization does not see the urgency to transfer the funds now. He also stated that he was uncertain of the details of the labor compliance program (LCP) issues since the budget bill did cause a transfer of bond dollars to the Department of Industrial Relations (DIR).

**SPECIAL CONSENT ITEMS** (cont.)

***Transfer of Critically Overcrowded Schools Program Funds*** (cont.)

Mr. Lyon indicated that the CBIA supports the OPSC's recommendation to transfer \$700 million now and reserve \$140.7 million for three months. He further stated that the home building industry is in a recession/depression and when the Board has exhausted the new construction funding, 100 percent of the cost for financing school construction will be placed on new home buyers.

Mr. Diaz expressed that the LCPs are essential and have an important role especially when so many contractors are going out and bidding on public works projects because of the dry spell in residential construction. He stated that some of the contractors have no experience with regard to public works contract law or prevailing wage law, so the guidance that the Board can give to school districts is important now in terms of which pots of money trigger the LCPs. Further, he indicated that the actual regulations that the DIR would be formulating are not in effect.

Mr. Walrath stated that the recent legislation [Senate Bill (SB) X2 9] provides the ability to use third-party LCP providers. He indicated that small school districts do not have their own LCPs; that they use third-party providers. He requested that the Board delay action on this item, and commented that he thought this item would have contained a process (which was suggested by a Board member at a prior meeting) which would have created a structure that protected small school districts.

Mr. Zinger supported the transfer of funds and addressed the issue of third-party LCP providers. He indicated that waivers can be granted to school districts who want to continue to operate their own approved LCP, but if school districts want to continue to use third-party LCPs, the fee will not be waived. He also stated that he has been in contact with DIR counsel and the regulations are not expected to be effective until the first of the year.

There was mixed feelings on the Board with regard to the transfer of funds. Some Board members wanted to delay action while others wanted to transfer the money. After further discussion and reiteration of the intent of the legislation that clearly states that the COS funds should and would be available to transfer over to the new construction category (within Proposition 47), a motion was made to approve the staff's recommendations, which would transfer \$700 million to the new construction fund and reserve \$140.7 million for three months (until the June 2009 SAB meeting). 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   |     |         |        |
| Dr. Ellerbee              |     | X   |         |        |
| Rosario Girard            | X   |     |         |        |
| Tom Sheehy                | X   |     |         |        |
| Total                     | 9   | 1   |         |        |

**Motion:**

Carried  X   
 Failed  \_\_\_

**SPECIALS/APPEALS*****Charter School Facilities Program Extension of Time Limit on Preliminary Charter School Apportionment***

Ms. Barbara Kampmeiner, representing the SAB staff, presented this item to the Board. In considering this item, the Board approved the staff's recommendation.

***Career Technical Education Facilities Program Fiscal Emergency Extension Request***

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

***School Facility Program Fund Release Priorities***

Ms. Masha Lutsuk, representing the SAB staff, presented this item to the Board. A motion was made, and carried, to: 1) continue with the current policy which is to fund projects on a first in-first out basis; 2) continue to have discussions at the Implementation Committee and work on a firm recommendation addressing school districts in the "worst of the worst" circumstances; and 3) agendaize this item for the April 2009 SAB meeting.

***Deferred Maintenance Program Funding Options***

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

- Mr. Les Crawford, Superintendent of the Twin Hills Union Elementary School District;
- Mr. Dave Walrath, representing the SSDA;
- Mr. Jim Patton, representing the Anderson Valley Unified School District; and
- Ms. Jeannie Oropeza, representing the DOF.

Mr. Crawford indicated that the District cannot afford to complete the project on its own and urged the Board for its support to fully fund those school districts that have extreme projects (health and safety projects).

Mr. Walrath asked the Board for confirmation that the deferred maintenance basic apportionments were being released to the 850 school districts and that the issue of funding extreme hardship projects was not interfering with those apportionments. The Executive Officer responded that depending on the option chosen by the Board, which may adjust the distribution of those funds, staff will bring an item back to the April 2009 SAB meeting. Mr. Walrath urged the Board to support the proposal to fully fund the projects on the condition that the school district commits that it will not include the funds in its baseline; on the condition that the school district will make its match, and on the condition that the school district will use the money to fund the project for which it is apportioned.

Mr. Patton indicated that the District cannot borrow the money and is faced with having to close down a facility that is a focal point of the entire community. He stated that he was in support of funding in date order received.

**SPECIALS/APPEALS** (cont.)

***Deferred Maintenance Program Funding Options*** (cont.)

The Board expressed concerns regarding this issue and after a lengthy discussion, a Board member asked if it was possible that the Board ignore the trailer bill language and baseline and simply amend the regulations to advance fund 100 percent of the money and the school districts would sign a waiver stating they would not come back for any more money for the extreme hardship projects. The Chair asked that Ms. Oropeza address how the budget will be built for next year. She indicated that the way the budget language is written, it would not be possible for the Board to entertain that idea because the way the law is written; the money would be built into their baseline. She further explained that a statutory change would be required and the Administration would not support that type of change.

A Board member suggested that Option 2B might be the better option for extreme hardship projects since it provides a one percent bump (which adds up to five percent over a five-year period) and funds the extreme hardship projects at 21 percent annually over a five-year period. The one percent bump could help school districts pay the financing costs. A motion was made to adopt Option 2B. 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   |     |         |        |
| Dr. Ellerbee              | X   |     |         |        |
| Rosario Girard            | X   |     |         |        |
| Tom Sheehy                | X   |     |         |        |
| Total                     | 10  |     |         |        |

**Motion:**

Carried  X   
 Failed     

Mr. Walrath addressed the Board concerning two additional issues: 1) could the Board apportion 2009/10 Fiscal Year monies to school districts in July? and 2) request staff to survey school districts in six months or so to find out who has not been able to start their project because of financing concerns so there will be information available to look at potential ways of adjusting this issue in the future. The Executive Officer responded that for the first issue the statute requires distribution of Deferred Maintenance Program funds after December 1<sup>st</sup> of each year and the OPSC would need legislative authorization to apportion funds at an earlier date; regarding the second issue staff will survey the school districts.

## **REGULATIONS**

### ***Implementation of Senate Bill 658***

Mr. Juan Mireles, representing the SAB staff, presented this item to the Board. In considering this item, the Board approved the staff's recommendations.

### ***Department of Finance, Office of State Audits and Evaluations Report***

This item was postponed to the April 22, 2009 SAB meeting at the request of the Board.

## **REPORTS**

### ***Seismic Mitigation Program***

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

- Mr. Tom Duffy, representing the CASH organization;
- Mr. Dave Thorman, State Architect, Division of the State Architect (DSA); and
- Ms. Margaret Brown, Assistant Superintendent of the San Ramon Valley Unified School District.

Mr. Duffy indicated that he believes the Board can address the issues of interim housing and the funding of structural engineer reports through regulation. He asked that the Board request staff to bring forward proposed regulations to the April 22, 2009 SAB meeting.

Mr. Thorman acknowledged that there are projects that are in need of the seismic funding and that the DSA will work with the OPSC in amending the regulations so the funds can be more accessible. The Chair requested that the DOF staff work with the OPSC and the DSA in terms of looking at the fiscal impact situation.

Ms. Brown stated that she understands the Board is concerned about liability to the State regarding an unfunded list but what about the liability for school districts. She indicated that school districts need the SAB and the State of California to help improve the seismic safety of the schools. She also indicated that when the funding available for this program was initially looked at, the shake zone was set at 1.55 and then the DSA identified many more buildings to the list and the shake zone was raised to 1.7.

There was much discussion surrounding this issue. A Board member expressed concerns regarding four areas: 1) the creation of an unfunded list and the liability associated with it; 2) changing the priority of the AB 300 list in the event of an earthquake or some ground shaking activity; 3) lawsuits; and 4) taking on substantial costs without a funding stream. The Board requested that staff agendaize this issue as an action item for the April 22, 2009 SAB meeting and provide proposed regulations addressing the issues of the ground shaking intensity and an unfunded list. In addition, a Board member stated that he has read some reports that Japan has aggressively looked at an early shake warning system and asked that this be brought forward for discussion. Mr. Thorman stated that since he is a member of the Seismic Safety Commission, he would bring that issue to their next meeting and report back at a future SAB meeting.

**REPORTS** (cont.)

***Discussion Item Postponement/Withdrawal Frequency***

This item was postponed to the April 22, 2009 at the request of the Board.

**INFORMATION/REFERENCE**

***SAB Meeting Dates for the Calendar Year 2009***

***School Facility Program Workload List - Applications Received Through March 5, 2009***

***Deferred Maintenance Program Unfunded List as of March 25, 2009***

***Emergency Repair Program Workload List – Applications Received Through March 12, 2009***

***Facility Hardship/Rehabilitation Approvals Without Funding List as of February 25, 2009***

**ADJOURNMENT**

There being no further business to come before the Board, the Chair adjourned the meeting at 7:00 p.m.

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**ROB COOK, Executive Officer**