

MINUTES
State Allocation Board
September 23, 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 September 23, 2009 at 2:00 p.m.

Members of the Board present were as follows:

- Tom Sheehy, Chief Deputy Director, Policy, Department of Finance, designated representative for Michael Genest, Director, Department of Finance (DOF)
- Scott Harvey, Chief Deputy Director, Department of General Services, designated representative 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
- Senator Alan Lowenthal
- Senator Loni Hancock
- Senator Mark Wyland
- Assembly Member Jean Fuller
- Assembly Member Tom Torlakson

Member of the Board absent was as follows:

- Assembly Member Julia Brownley

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

Rob Cook, Executive Officer
Susan Ronnback, Interim Assistant Executive Officer

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

Rob Cook, Executive Officer
Lisa Silverman, Chief of Fiscal Services
Juan Mireles, Program Services Policy Manager

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

Teresa Boron-Irwin, Senior Staff Counsel Specialist

With a quorum present, Tom Sheehy, Chair, called the meeting to order at 2:07 p.m. The Chair announced there was a vacancy on the Board due to the resignation of Governor Appointee, Ms. Rosario Girard

PRIOR MINUTES

Senator Lowenthal provided a clarifying statement in response to Inspector General Laura Chick's report at the August Board, that the proper authority over School Facility Program bond funds is the SAB. A motion was made and carried to approve the Minutes for the August 26, 2009 SAB meeting as presented.

EXECUTIVE OFFICER'S STATEMENT

The Executive Officer informed the Board of the following:

New Executive Order on Transparency

In an effort to increase transparency, the Governor issued Executive Order S-20-09 on September 8, 2009, providing direction to State agencies to post audits, program reviews, monitoring and accountability reports, evaluations, inspections and assessments, and studies of their operations dating back to January 1, 2008 to this new web site. The web site link is www.reportingtransparency.ca.gov.

Ms. Moore questioned what reports would be posted, every districts' audits? The Executive Officer responded that the information to be posted needed to be determined. Ms. Moore requested that the items determined for posting purposes be brought before the SAB prior to posting to the reporting and transparency web site.

Regulation Update

On August 31, 2009, the Office of Administrative Law (OAL) approved amended regulations under the Emergency Repair Program that provide a three month extension for school districts to complete replacement or repair projects and expedite the return of savings to the State.

On September 18, 2009, the OAL approved amended regulations under the School Facility Program to extend the additional grant for general site development costs until no later than January 1, 2010.

Note for Web casts

Our constituency is beginning to rely on our web casts. At a time when travel budgets have been slashed, this is an important service to provide. The OPSC received some comments with regard to the last meeting – some members are difficult to hear. We remind all SAB members and staff to use their microphones so that the web cast can be effective.

Miscellaneous

Senator Lowenthal referred to a letter sent by the Executive Officer on September 10, 2009, recommending the Board reduce the number of SAB meetings by meeting every other month rather than every month. The Senator disagreed with the recommendation for reasons of transparency and indicated that this matter needed to be fully discussed by the Board. Mr. Scott Harvey suggested that the December Board meeting coincide with the Green Schools Summit in Pasadena. The Chair stated that there would be no finalization of the SAB meeting schedule until the issue had been fully discussed at the next SAB meeting on November 4, 2009. Mr. Tom Duffy, representing the Coalition for Adequate School Housing (CASH), addressed the Board in support of monthly Board meetings and also holding the December Board meeting at the Green Schools Summit. Assembly Member Fuller stated opposition to a December Board meeting being held in Pasadena due to limited financial resources of the State and school districts.

Assembly Member Torlakson requested that staff agendize an analysis of the effect furloughs have had on the OPSC's workload and how furloughs have impacted staff's preparation for Board meetings and ultimately staff's ability to get bond dollars out the door to school districts.

CONSENT ITEMS

The Board approved the Consent calendar as presented.

FINANCIAL REPORTS***Status of Fund Releases***

Ms. Lisa Silverman, representing the OPSC staff, presented this item to the Board. There was a lengthy discussion surrounding the lack of requests to access the available funding. Ms. Silverman responded that perhaps districts may be hesitant to come forward if they have to come forward with a signed construction contract with no guarantee that there would be funding available. It was also felt that once bonds were sold to cover the remaining \$460 million, the flood gate would open requesting those funds.

Mr. Duffy, representing the CASH organization, addressed the Board and stated that school districts are facing the same issues as the State of California. He also indicated that the school districts are communicating with the Division of the State Architect on which projects are Career Technical Education Facilities Program projects so the projects are treated as priority in order to get the dollars out on the street. He further stated that the CASH organization asked the State Treasurer's Office (STO) to provide a presentation at the fall CASH Conference on how to bridge, what are some of the safe things you can do.

Ms. Moore requested that a representative from the STO be present at the next SAB meeting to provide insight of where the State is in terms of issuing bonds for all infrastructure programs. She also stated that the Board should ask at a minimum for enough bond funds to make the list of projects with SAB apportionments prior to December 17, 2008 whole should the STO be successful in selling bonds. Further, she indicated that at a maximum look at projects for the quarter of January/February/March/April and advocate for additional funds because these infrastructure projects create jobs and provide economic stimulus.

The Chair requested that staff review the letter that was sent to the Pooled Money Investment Board earlier in the year and update the letter with the current conditions and circulate the letter around to the Board members for input by early October.

Status of Funds

Ms. Lisa Silverman, representing the OPSC staff, presented this item to the Board. A question was posed as to why there was so little money in unfunded approvals. The Executive Officer responded by stating that assessed valuations have dropped, building activity is low, and there are no developer fees to be had. The Chair agreed with the reduced developer fees statement and went on to emphasize the drop in the California home construction industry. Mr. Richard Lyon, representing the California Building Industry Association, addressed the Board and explained that in order to have a healthy housing market to keep up with household formation, job creation, and population growth there should be 220,000 housing units built per year. He stated that last year it was a total of 65,000 units. For 2009, the revised projection as of September was a total of 39,500 units. Mr. Harvey asked if it was possible to combine the Energy category in Proposition 47 to the High Performance category in Proposition 1D thus expanding opportunities for High Performance schools. The Executive Officer responded that staff would have to look into the statute and bond covenants to determine if there was a way.

FINANCIAL REPORTS (cont.)***Status of Funds*** (cont.)

Ms. Moore asked where the \$17.7 million was reflected in the Status of Funds report for the Emergency Repair Program. Ms. Silverman responded that the OPSC has been in contact with the State Controller's Office and anticipates getting those monies posted to reflect in the next month's SAB Agenda. The Chair requested this issue be brought back as a standing report. The Board accepted the Status of Funds report as presented.

SPECIAL CONSENT***Alisal Union Elementary/Monterey 58/65961-00-001***

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

Dos Palos-Ora Loma Joint Unified/ Merced 58/75317-00-001

This item was withdrawn.

Sacramento City Unified/Sacramento 58/67439-00-002

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

School Facility Program Career Technical Education Facilities Program Rescission

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

REGULATIONS***Fiscal Crisis Regulation***

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

Modernization Funding For Accessibility and Fire Code Requirements

This item was held over to the November 2009 SAB meeting at the request of the Board.

SPECIALS/APPEALS***Transfer of Critically Overcrowded School Program Funds***

Mr. Juan Mireles, representing the SAB staff, presented this item to the Board. There was a general discussion surrounding this issue and a modification was made to the staff Recommendations that would reserve \$35.1 million for any of the 19 urban districts that are eligible under the COS Program for close out audits. The Board approved the staff recommendations and the modified Recommendation No. 3.

SPECIALS/APPEALS (cont.)***New Construction Grant Adjustment***

This item was withdrawn.

Material Inaccuracy Overview

This item was postponed until the Board sets policy regarding Material Inaccuracy.

Senator Hancock requested that when this item is brought back for a full discussion, a differentiation be made between fraud and honest mistakes, and have a range of penalties to fit the different circumstance. The Executive Officer stated that he could explain approaches that have been taken in the past and make distinctions between patterns of behavior versus one off instances. Ms. Moore requested that scope change of material inaccuracy be discussed at a future Implementation Committee meeting.

Material Inaccuracy - Loss of Self-Certification Penalties Overview

This item was postponed until the Board sets policy regarding Material Inaccuracy.

Chula Vista Elementary/San Diego 57/68023-00-005 & 009

This item was postponed until the Board sets policy regarding Material Inaccuracy.

Long Beach Unified/Los Angeles 50/64725-00-008

Mr. Rick Asbell, representing the SAB staff, presented this item to the Board. Mr. Asbell provided background on the number of classrooms constructed (17 of 26) and the relocation of nine relocatable classrooms from another school site to the Cabrillo High School site. This decision did not increase the District's capacity; therefore the OPSC staff believes that the District falsely certified on the number of classrooms to be constructed. Mr. Asbell also indicated that the District is required to return approximately \$1.9 million in excess State funding due to the pupil grants associated with the nine relocatable classrooms (27 x 9 = 243 pupils). The Chair questioned if the law provided an appropriate interest rate for the return of the excess funding. Mr. Asbell responded that it would be at the Pooled Money Investment Account rate.

Ms. Carri Matsumoto, Executive Director of Facilities for the Long Beach Unified School District, addressed the Board and stated that the issue before the Board is an audit issue, not a material inaccuracy. She indicated that a material inaccuracy penalty would be unwarranted and that a five-year self-certification loss would be extremely damaging to a district of the Long Beach Unified's size and would hinder the District's ability to move forward with their \$1.2 billion capital facilities program.

Mr. Harvey asked staff to point out where it says that buildings have to be new if you are accommodating students. The Executive Officer responded that the buildings did not have to be new but they had to be newly acquired to the District and that moving relocatables from one site to another does not add capacity on a district-wide basis. Mr. Harvey asked Ms. Matsumoto to briefly explain the solutions the District offered and if any of the solutions point to facts that the District falsely certified. Ms. Matsumoto explained that the District provided two different remedies: 1) the District could have done a "use of grants" and 2) the District purchased 300 relocatable classrooms that added capacity. The Chair asked for an explanation of the term "use of grants." Ms. Emily Baratta, representing School Facility Consultants, explained that a district

SPECIALS/APPEALS (cont.)

Long Beach Unified/Los Angeles 50/64725-00-008 (cont.)

can request up to 135 percent of the capacity of a project, basically asking for more pupil grants than are being housed in the project as a way to cover costs. There was mutual agreement from Board members to resolve the issue with no material inaccuracy. Senator Wyland asked for clarification on the District's application and whether it included relocating portable classrooms. The Executive Officer stated that in New Construction it is assumed that you are bringing in new capacity and not shifting around existing capacity. Assembly Member Fuller wanted to emphasize the seriousness of being in an audit without receipts for 9 portables and she was very concerned that \$1.9 million was missing in the District somewhere. She felt that the District should pay back the money with interest but also felt that a loss of self certification for 5 years may be too much considering the District now has new staff and a good record of self certifying since 2001. Ms. Matsumoto clarified that on the DSA approved plans, the portables say relocated. It was generally agreed by the Board that District did not intentionally falsely certify however the District did not come forward prior to the audit to try and remedy the error. Mr. Harvey proposed a bifurcated motion 1) request the District to repay the \$1.9 million including interest at the PMIA rate to the State and adjust the pupil baseline eligibility to reflect the reduction in the apportionment, and 2) the material inaccuracy issue is a separate issue and somebody else would need to make a motion. Senator Lowenthal entered a substitute motion Option # 2, no finding of material inaccuracy with the clarification that the District repay the audit findings of \$1.9 million plus interest calculated at the PMIA rate. The Chair called for a roll-call vote 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			
Tom Sheehy	X			
Total	8			1

Motion:

Carried X

Failed

Public Comment

Mr. Tom Duffy, representing CASH, addressed the Board and stated that there was a provision in the Education Code that allows a board of education to avoid bid if there is an emergent situation.

INFORMATION/REFERENCE

Dates for the Remaining 2009 State Allocation Board Meetings

School Facility Program Unfunded List as of August 26, 2009

School Facility Program Workload List Applications Received Through August 19, 2009

Emergency Repair Program Unfunded list as of September 23, 2009

Emergency Repair Program Workload List Applications Received Through September 3, 2009

Facility Hardship/Rehabilitation Approvals Without Funding as of August 26, 2009

MISCELLANEOUS

- The Chair announced that the next SAB meeting will take place November 4, 2009 at 2 p.m. During the November 4th meeting a discussion and decision will be made as to the future meeting schedule of the SAB.
- Mr. Harvey requested that the issue of Financial Hardship Regulations be addressed at a future SAB meeting.
- Assembly Member Fuller requested Ms. Susan Ronnback, Interim Assistant Executive Officer, to brief her on the issues set forth in Ms. Girard's resignation letter.
- Senator Wyland spoke to the issue of the SAB Rules and Procedures Subcommittee that he would look into a future meeting for governance.

CLOSED SESSION

At 2:59 p.m. and in accordance with Government Code Section 11126(a)(1), the Board convened into closed session to discuss issues relating to personnel involving the position of the Assistant Executive Officer, including but not limited to, appointment and employment with the State Allocation Board. The Chair announced that the closed session was over and the Board reconvened into public session at 4:35 pm.

ADJOURNMENT

There being no further business to come before the Board, the Chair adjourned the meeting at 6:02 p.m.



ROB COOK, Executive Officer