

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

March 12, 2009

State Capitol
Sacramento, CA

Members Present

Katrina Valentine, SAB
Juan Mireles, SAB/OPSC (Alternate for Lori Morgan)
Lisa Constancio, CDE (Alternate for Fred Yeager)
William Savidge, CASH
Mamie Starr, CCESSA (Alternate for Kenn Young)
Margie Brown, CASBO

Robert Pierce, SSD
Mark DeMan, LAUSD
Richard Conrad, DSA
Chris Ferguson, DOF
Gary Gibbs, CBIA
Cesar Diaz, SBCTC (a.m. session only)
Dennis Dunston, CEFP

Members Absent

Dean Tatsuno, AIA
Debra Pearson, SSSA

The meeting was called to order at 9:40 am.

Minutes

The Chair announced that the minutes for the February 19, 2009 Implementation Committee (IMP) meeting would be presented at the next IMP Committee meeting.

Opening Remarks

The Chair presented the Revised 2009 IMP Committee Meeting Calendar Item, which was accepted.

A committee member noted that some items on the Pending Items list have remained on the list for some time without being considered at the IMP. It was suggested that a process be developed to start resolving some of these issues. The Chair agreed that some items have remained outstanding for awhile and that they are important issues, but noted that the order of the list is subject to change due to developing issues resulting in a shift of priorities. The Chair agreed to work with the Office Public School Construction (OPSC) to develop a process to move forward with items on the list.

A committee member requested that the Project Information Worksheet be scheduled on the next IMP agenda since school districts are waiting for the annual increase authorized by the enactment of AB 127. The OPSC expressed the intent to present this item at the next Imp meeting, but noted that the item was currently being developed.

Potential Priority Funding Order*Overview:*

The Chair announced that there would not be a formal presentation on this item since the item was intended to open committee discussion on the topic. The Chair further noted that the discussions at the previous IMP meeting seemed to favor the date order received process with special considerations, and that the present discussion should focus on defining those terms.

Discussion Points:

It was requested, as a separate component to the priority funding order, that the State Allocation Board (SAB) consider providing additional funding to cover costs associated with bridge and gap financing, such as loan origination fees and interest. An additional request was made for the SAB to consider providing additional funds for increased project costs due to work stoppage. The OPSC responded that clarification is being sought regarding whether the SAB has the statutory authority to provide additional funds to cover a district's financing costs, and whether providing this additional funding would violate the "full and final" provision. An audience comment was made that the "full and final" provision was put in place under certain circumstances, such as the State being able to fund approved apportionments, which have changed as a result of the fiscal crisis, and that the SAB should look at excessive costs incurred as a result of the SAB not being able to meet its funding commitments.

It was noted that statute does not clearly differentiate between fund releases and apportionments, and that litigation resulted in the elimination of prioritization for projects after 2002, which had the effect of restoring the "first-in, first-out" (FIFO) order. It was further noted that the rules that are in place at the time of an application submittal should remain in place irrespective of a conflict.

A comment was made that it would be difficult to discuss priorities without knowing when the money would be available since the situation is fluid, and projects not in jeopardy today could be in jeopardy tomorrow. A committee member agreed with this statement, but commented that there should be a plan of action in place when the money becomes available.

A suggestion was made that the fiscal crisis be addressed through a class of appeals in which school districts would be responsible for preparing their own justification for moving to the front of the line. Some of the following concerns raised with using an appeal process were:

- Typically, the appeals process is designed as an option for districts only after all other options have been exhausted.
- Due to limited available funds, a large number of districts would likely submit an appeal, essentially creating a race for districts to get their appeal heard before the SAB meeting.
- The time required to process the appeals would significantly delay releasing funds to districts.
- Increased appeals would significantly extend the length of the SAB meetings.
- Uncertainty would be created since districts, especially small districts, would not be able to plan for the project without knowing whether their appeal will be approved.
- Districts may be ineligible for loans if it is not known when State funds will be provided.
- An appeals process would still require established evaluation criteria.

Another option discussed was to keep the FIFO method while reserving a certain percentage of available funds, such as 10 percent, for districts in the most vulnerable financial situations as a result of not receiving State bond funds. Comments made regarding this method included:

- The current FIFO method is a predictable method that allows districts to better plan their construction projects; any alternative method creates more uncertainty.
- Districts that risk insolvency due to the lack of State bond funds should be considered the most vulnerable.
- Only districts that signed a Contract for at least 50 percent of the construction costs prior to December 17, 2008 should be considered for prioritization, regardless of whether the district submitted a request for fund release (Form SAB 50-05) to the OPSC.
- Any funds that become available need to be distributed to districts quickly. For the OPSC to review each district's financial situation to determine whether the district is at risk of insolvency would be very time consuming. A suggestion was made that the Interim Accounting Reports, which districts already provide to their county office of education, could be used in order to reduce the district preparation and OPSC review time.

- In addition to risk of insolvency, a district's ability to borrow funds to cover the project costs is also a factor when determining which projects are the most vulnerable.
- The costs associated with bridge financing, even if a district would have difficulty repaying that loan, could be less than the costs associated with stopping the project, especially if litigation costs were incurred. Some districts may obtain bridge financing, but still risk insolvency.
- Some districts may have difficulty obtaining bridge financing as there is no timeline for when the loan could be repaid.
- Districts determined to be the most vulnerable could be placed on a funding list that could be compiled once, as a 'snapshot', or updated periodically to reflect the changes in available State bond funds and changes in districts' financial situations.

A concern was raised that any priority list created could be viewed by the Pooled Money Investment Board as a list of the only priority projects. It was suggested that any list of projects determined by the SAB that are eligible for exceptions to FIFO should not be referred to as a Priority List. Rather, a different term, such as Funding Matrix or Funding List should be used.

Next Steps:

The OPSC stated that multiple priority funding options would be presented at the next SAB meeting.

SB 658 (Romero)

Overview:

OPSC staff members Karen Hua and Ron Seto presented the proposed revisions and amendments to the School Facility Program (SFP) resulting from the enactment of Senate Bill 658.

Staff proposed that the SFP regulations and SFP forms be amended as follows:

- SFP regulation section 1859.2 changes the revision date to 03/09 for the *Existing School Building Capacity* (Form SAB 50-02), *Eligibility Determination* (Form 50-03), and *Application for Funding* (Form SAB 50-04).
- SFP Regulation 1859.35 be amended by removing Section (c) and SFP Regulation Section 1859.51 be amended by revising Section (j)(2) and (o).
- Forms SAB 50-02, 50-03, and 50-04 be revised to eliminate the references for Operational Grants.
- Any District's new construction eligibility that has been adjusted due to Operational Grants will have all or part of its remaining lost eligibility returned.

Discussion Points:

A committee member inquired if every school district that "took a hit" will have their eligibility restored. Staff responded in the affirmative.

An audience member commented on the date references on Attachment A, SFP Regulation Section 1859.51 (o). The audience member contended that by revising the regulation section by including dates will result in continual eligibility 'hits' for school districts who had received operational grants before. The suggestion was made to not make any revisions to SFP Regulation Section 1859.51 (o). A committee member suggested that the new Education Code Section be added instead of the 2007-2008 enrollment year.

An audience member inquired regarding whether school districts must re-submit any forms. A committee member responded that this is an internal OPSC adjustment and no form would be needed.

Adjournment and Next Meeting

The meeting adjourned at 3:10 p.m. The next IMP meeting is scheduled for Friday, April 3, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.