

Stuart & Associates

Governmental Consultants

TO: Dr. Joe Ovick

FROM: Susan Stuart

DATE: March 28, 2006

RE: March 22, 2006 State Allocation Board Meeting

State Allocation Board - March 22, 2006

Executive Officer Statement

An issue paper is being prepared for the April SAB meeting to discuss the findings on “Grant Adequacy”.

Status of Funds

SFP Bond Funds (Propositions 47 and 55)

- ◆ New Construction
 - New Construction - Approximately \$3.63 Billion
 - Energy – Approximately \$2.9 Million
 - Note: Energy funding is likely to be exhausted with the April Apportionments*
 - Small High School – \$20 Million
 - Charter School
 - Applications – approximately \$5.2 Million
 - Relocation/DTSC fees – approximately \$13.1 Million
 - Hazardous Waste Removal – approximately \$2.6 Million
- ◆ Modernization
 - Modernization - Approximately \$76.9 Million
 - Energy – Approximately \$6.1 Million
 - Small High School – \$5 Million
 - Note: An unfunded modernization list will be created beginning with the April SAB meeting*
- ◆ Critically Overcrowded Schools
 - 15% reserve – Approximately \$341.5 Million
- ◆ Joint Use – Approximately \$32.1 Million

Prior Bond Funds

- ◆ Proposition 1A (SFP) Bonds
 - New Construction - Approximately \$2 Million
 - Hardship – Approximately \$7.3 Million
- ◆ Lease-Purchase Bonds – Approximately \$21.4 Million

Note: OPSC indicated that these funds could be used for AB 1795 Joint Use Projects or, with legislation, could be moved to fund new construction or modernization projects.

SB 6 (Williams Settlement)

- ◆ Needs Assessment Program – \$2.5 Million
- ◆ Emergency Repair Program (ERP)– \$200.7 Million

Vice-Chair of the State Allocation Board

The SAB determined that the Vice-Chair of the State Allocation Board should be a legislative member of the Board elected by the majority of the members and he/she is to serve in this position until someone else is elected to the position. The responsibilities of the Vice-Chair include:

- ◆ Assume the responsibilities of the Chair in his/her absence
- ◆ With the Chair, review the proposed SAB agenda

Senator Scott was elected to the position by unanimous vote.

Deferred Maintenance Program Deposits

The OPSC presented a report identifying those districts that had not made a full match of the SAB Deferred Maintenance apportionment. The State's apportionment was reduced to the amount of district's contribution provided.

Under Education Code Sections 17584.1(b) and 17584.1(c) the governing board of these districts must report to the Legislature by March 1 that:

- ◆ A schedule of the complete school facilities deferred maintenance needs for the current year.
- ◆ Provide a detailed description of the district's spending priorities for the current year and how these priorities prevent the district from setting aside the match.
- ◆ How the district will meet its current year's deferred maintenance need without making the full match.

These districts may have difficulty in obtaining any SAB financial assistance in the Extreme Hardship Program or in the Emergency Repair Program.

Santa Ana Unified School District Appeal

The Santa Ana Unified School District received funding to acquire a school site and construct the school. However, they were not able to construct the school due to local community pressures. As a result, the District sold the site and generated a \$7.1 million profit from the sale. This situation has never arisen before, where a district received construction money, chose not to construct on the site, and sold the property for a large profit – so the SAB was in new territory. There was considerable discussion as to what the Board was legally able to do and how the law could and should be interpreted.

The OPSC recommendation was to require the district to close out the project to costs incurred. This would include the original full and final apportionment, including site apportionment, plus interest accrued -- but excluding any allowable planning costs incurred by the District. Some members felt this was too generous and that the district should share some of the profits with the State, others felt it was too punitive. One SAB member made a motion to approve the recommendation, but include the amount of interest. This recommendation failed on a vote of 5-4.

The District deferred to their attorney, who stated the position that once the site is purchased, the property and its disposition is outside of the purview of the SAB because the Lien provisions that used to exist under the Lease-Purchase Program do not exist under the School Facilities Program. Therefore, they have beneficial use of all of the profits, provided it is used for capital facilities purposes. He inferred there could be litigation, if the SAB ruled otherwise. His comments were not received well by the Board.

There was an attempt to reinstate the original staff recommendation, but there seemed to be some ill will at that point. The SAB made it clear that they were not willing to allow any district to receive State Bond funds to purchase a site and subsequently sell it for a profit by merely returning the principal. This could lead to a form of land banking and could put the status of this and future State Bond funds in jeopardy.

The SAB directed the staff attorney to meet with the District and their attorney to discuss interpretations of current statutes as it related to this issue and report back to the SAB.

Julian Union High School Appeal

The Julian Union High School District received Lease-Purchase Program modernization funding for a four classroom building at the Julian High School. After the work was completed, it was determined that the work was not performed in accordance with the approved DSA plans. During the modernization, some structural components were either improperly installed or not installed at all. The District has filed a lawsuit against the bonding company and the contractor. The court date is scheduled for June 30, 2006. However, the facility is currently unsafe to occupy.

The SAB approved the District's request for conceptual approval to abandon and replace the facility with the following conditions:

- ◆ An application to replace must be received within 18 months
- ◆ A progress report on the litigation must be made annually beginning February 22, 2007
- ◆ Any proceeds from the settlement must be shared 50/50 with the SAB up to the State's contribution in the replacement application.

Santa Maria Joint Union High Appeal

The Santa Maria Joint Union High School District received School Facilities Program new construction funding for the Pioneer Valley High School. With the construction work nearly complete, it was discovered that the windows were not properly sealed (they had been assembled in the factory, rather than on site) and water intruded into the structures causing mold to grow. Upon further examination, it was found that the damage extended to some structural components. At present the District is withholding retention money in the amount of 3.2 million and has filed suit against the contractor and its bonding company.

The SAB approved the District's request for conceptual approval to rehabilitate the facilities with the following conditions:

- ◆ An application to replace must be received within 18 months

- ◆ A progress report on the litigation must be made annually beginning February 22, 2007
- ◆ Any proceeds from the settlement must be shared 60/40 with the SAB up to the State's contribution in the rehabilitation application.

Labor Compliance

The OPSC presented a report regarding the adequacy of funding the labor compliance requirements of the SFP projects. Although the OPSC indicated that they did not have enough of a sampling to make any recommendations, the report indicates that the apportionments for labor compliance costs are too high. Districts are reporting an average of 58 percent savings on a new construction project and 38 percent savings on a modernization project.

The OPSC will report back to the SAB when there is a larger sampling from the close-out of SFP projects.

Good Repair Standards Report

As part of the *Williams* legislation, OPSC was directed to provide an Interim Evaluation Instrument to define "good repair". In addition, the OPSC was to present a report to the Governor and the Legislature providing recommendations for establishing a permanent State definition of "good repair". The report has already been delivered to the Governor and the Legislature.

The SAB accepted the report.