

Stuart & Associates

Governmental Consultants

TO: Superintendents/Facilities Directors

FROM: Susan Stuart

DATE: January 30, 2009

RE: January 28, 2009 State Allocation Board Meeting

This meeting lasted until after 9:00 – I don't think five hours is the record, but it may be close. It appears the following will be permanent members of the SAB, but it is not yet official. With the addition of veteran members Assembly Member Torlakson and Senator Lowenthal, it is apparent the tone of the Board is changing.

Chair – **Tom Sheehy** - Department of Finance, replaced former Chair, Ann Sheehan

Kathleen Moore – CDE – Long time member representing SPI Jack O'Connell

Scott Harvey – DGS – Relatively new member replacing Will Semmes

Senator Alan Lowenthal – Replaces Senator Joe Simitian

Senator Loni Hancock – Replaces Senator Jack Scott

Senator Mark Wyland – Replaces Senator Bob Margett

Assembly Member Tom Torlakson – Replaces Kevin DeLeon

Assembly Member Julia Brownley – Replaces Gene Mullin

Assembly Member Jean Fuller – Current member

Rosario Girard – Current Public Member

STATUS OF FUNDS

Prop. 1D – \$7.3 Billion – November 2006	
New Construction	\$ 499.3
Modernization	2,062.7
Career Technical Education	82.8
High Performance Schools	88.7
Overcrowding Relief	901.0
Charter School	37.0
Joint Use	0.0
Prop. 55 - \$10 Billion – March 2004	
New Construction	\$30.0 *
Modernization	0.2 *
Critically Overcrowded Schools	415.4
Charter School	27.2

Relocation/DTSC Fees	13.1
Hazardous Material/Waste Removal	2.6
Joint Use	0.0
Prop. 47 - \$11.4 Billion – November 2002	
New Construction	\$28.2 *
Energy	0.6
Charter School	46.2
Modernization	0.4*
Critically Overcrowded Schools	840.7
Joint Use	0.6
Prop.1A – 6.7 Billion – November 1998	
New Construction	\$4.2 *
Modernization	1.8 *
Hardship	15.9 *
Class Size Reduction	0.0

*Total amount not available at this time

EXECUTIVE OFFICER’S STATEMENT

- The Office of Administrative Law approved the regulations to permit financial hardship school districts to receive site and design funds under certain conditions for Overcrowded Relief Program projects. The regulations became effective 1-21-09.
- The Federal Stimulus proposal will be reviewed by OPSC and compared to current SFP regulations. It appears the regulations will need to be amended to accommodate this funding source.
- The agenda only includes close-out projects and apportionments for Emergency Repair Program projects. There was no apportionment of any other types of SFP applications.
- The Construction Cost Index was not addressed as usual in the January SAB meeting. Additionally, the Deferred Maintenance funds were not allocated, as it is uncertain how this funding source will be treated in the ongoing budget negotiations.
- Other items not brought before the Board this month is the “up to 6 percent” adjustment for projects and extension of the general site allowances which expired in January.

SAB Meetings

Because audience members were turned away from last month’s SAB meeting

due to lack of space, it is clear a large meeting room is needed for SAB meetings. With legislative hearings commencing, the larger hearing rooms may not be available. The Chair directed staff to research other venues near the Capital. One suggestion was to change the meeting date to a Thursday, however, this was not considered possible for the legislative members because of commitments in their districts.

The SAB is also considering remote access to the meeting by way of video conferencing via internet connection. This could allow for public comment via video feed. A report on the feasibility of this option will be presented to the SAB.

CONSENT CALENDAR **Murrieta Valley Unified School District**

Senator Lowenthal asked to have this issue removed, as there wasn't enough information provided in the agenda. The issue, discovered by the district and reported to OPSC, was that the apportionment for the project was double the amount than the scope of the project. The district offered the return of the State funds plus interest and that the classroom capacity be counted against the district's new construction eligibility.

Discussion

The SAB asked OPSC why this was not considered a Material Inaccuracy (MI). Staff indicated since the district brought this item to OPSC with a proposed solution, they believed the district handled the situation in the proper way. It was stated that if all districts were to be this forthright with discovered errors, there would be no need for MI regulations. This argument would lead to the assumption that MI penalties would be issued based upon a district finding an error themselves, rather than for the severity of the infraction. So if a relatively minor, inadvertent district error was discovered in an audit by OPSC, a district could receive MI penalties. But if a district made an egregious error and reported it, they would get off without penalty. The discussion on this issue should prove interesting next month.

SAB Action

The SAB requested the close-out for this project be presented as an appeal item at the next SAB meeting.

APPEALS

Monsignor Oscar Romero Charter

The Monsignor Oscar Romero Charter School filed an application for funding,

but because of the prioritizing method, the project did not receive an apportionment. One of the priority point calculations includes the percentage of free and reduced lunch students during the 2006/07 school year. Since the charter did not exist during that school year, they were able to use the percentage noted by a nearby school of 91 percent. The Charter reported they had 100 percent participation in the 2007/08 school year and if that would have been factored, they would have made the cut for receiving an apportionment. The district requested a re-calculation of priority points. This would mean the SAB would need to consider rescinding all apportionments made and reshuffle the applicants to see where the funding line would end, and would result in four projects previously eligible for the apportionment not making the cut.

Alternative

The Charter suggested the SAB could use some of the reserves to fund their project. OPSC indicated the reserve was for possible cost overruns on previously approved projects. The Charter countered by saying they were aware that some charters will not be proceeding with their projects and the funds will be returned to replenish the reserve. This project is already to go forward today.

SAB Action

The SAB approved the staff recommendation to deny the charter school request and directed OPSC to provide a report and a recommendation related to using the reserve to fund additional charter applications. In addition, the report will address whether there should be another charter application round.

San Bernardino Unified School District

The San Bernardino Unified School District requested funding under the Overcrowded Relief Grant (ORG) program which had previously received SFP funding for site and design. When the application was filed the district qualified for Financial Hardship funding. OPSC and the district disagreed on whether a district could apply simultaneously for two programs - New Construction and ORG - which had some overlap. The project was delayed at OPSC, but rather than going to the SAB for an appeal, the district litigated. The judge sent the district back to the SAB to first exhaust all administrative solutions.

Options

OPSC had provided the district with options during the last ORG funding cycle that included:

- Rescind the new construction FH application and submit a new application under the ORG program for the entire scope.
- Reduce the new construction FH application and submit a new application under the ORG program for the entire scope.
- Continue the new construction FH application and receive full and final grant funding under new construction program.

The district rejected these options because it would require the new construction project to be fully closed out before they could file the ORG application. Further, the site acquisition portion would have been reevaluated and reduced to the current value that is less than the value permitted under the FH application.

Suggestion for Compromise

The Chair of the SAB had no problems with the co-mingling of programs, but rather with funds from both programs being used for the same purpose. The chair suggested the district be permitted to file the new ORG application, which has a deadline of January 30th and remove any overlapping funding. The district testified if they submitted their ORG application now, they no longer would qualify for FH and would lose millions of dollars.

SAB Action

After a very contentious debate the SAB was split on the decision and voted 5-2 (six votes are needed) to allow the district to use the original submission date so they could remain in FH. By the time the vote was taken many members had gone, so the issue will come back next month when there is a full board.

Oak Grove Elementary School District

The district was allowed to deposit sale of site proceeds into their general fund. Assembly Member Brownley stated she doesn't support using capital funds for general fund purposes and abstained from the vote.

REPORTS

Report on the Bond Market

The SAB requested a report from the State Treasurer regarding the impact of the Bond Market SFP. The usual past practice to have 6 or 7 bond sales per year has been impacted by the State's poor bond rating – which is the lowest of the 50 states. The State hasn't been able to sell bonds since June – mostly because the State does not have a balanced budget. Furthermore, there is a lack of funds available to investors, mostly mutual funds, due to the economic downturn in the nation.

The Treasurer's office said for the state to be able to start selling bonds it is necessary to have buyers with good rates. He mentioned that the state is paying 9.5 percent on some bonds. When the state is able to sell bonds again, the money will go out very slowly – maybe up to a year or two.

Unfunded Approvals

In the past whenever the State runs out of bond funds, an unfunded list is created which identifies projects that have met all state requirements and creates a funding priority based upon project submittal date. Stakeholders have requested such a list so that they can obtain bridge financing. OPSC and the Chair of the SAB have resisted the creation of such a list.

The CDE representative stated that applicant districts need to have a road map regarding the intent of the SAB as it relates to approving projects. She suggested an “action” item on the SAB next month on this issue. The chair stated he didn't believe there was an urgency for this item considering the current list of \$2.4 billion that had to go out first. He finally agreed to place an item on the agenda for next month, but stated that doesn't mean it has to be acted upon.

Financial Crisis Impact to SFP Projects

At the last SAB meeting OPSC was directed to provide a report on which districts were having litigation issues, restart costs, and other project impacts related to the State's budget crisis. OPSC provided a listing of projects that have received an apportionment and the funds were not yet released. The report also noted whether the project was under contract, whether the district could proceed without the State share as well as any information relating to the cost of stopping and restarting the project.

The agenda included a report listing 866 projects that are impacted by the freeze in apportionments – adding up to \$2.4 billion. The CDE representative suggested these projects be prioritized and presented to the PMIB as other agencies such as Caltrans has done. It was also suggested this go to the Implementation Committee so practitioners could weigh in on how the prioritization would be established.

The Chair stated it was the role of the SAB to create policy, not the Implementation Committee. During a heated discussion it was pointed out that the Implementation Committee has never made policy, merely tapped into stakeholders to make recommendations to the SAB.

PMIB

There was interest in trying to communicate with the Pooled Money Investment Board (PMIB) about funding projects on this list as part of the Pip's prioritizing of release of funds.

SAB Action

The SAB directed OPSC to present this list to the Implementation Committee for discussion. That discussion will likely include possible reimbursement for unforeseen costs resulting from the State budget crisis.

REGULATIONS

Financial Crisis - Emergency Regulations

OSPC provided emergency language to assist districts in the Joint Use, Charter and Career Tech programs during the State's budget crisis. The current language in the regulations allows temporary stoppage of the clock when time sensitive deadlines cannot be met because the project has been stalled by the state.

There was discussion about the need for insertion of a sunset clause so that the emergency provisions wouldn't continue when the fiscal situation turned around. It was decided that the Assistant Executive Officer, Katrina Valentine, would be responsible for monitoring the sunset provisions. At an appropriate time, she would request the Board to address the need and appropriateness of a sunset of these emergency regulations.

OTHER ITEMS OF INTEREST

Implementation Committee

The Implementation Committee meeting scheduled for February 6, 2009 has been rescheduled to Thursday February 19, 2009.

Joint Use Projects

The deadline for filing a Joint Use application is March 1, 2009 and CDE would like to have at least 3-4 weeks to review the project.

NEXT SAB MEETING

The next SAB meeting will be held on February 25, 2009 at 4:00 p.m. in the State Capitol – unless an alternative meeting location is found.