

Testimony on the Governance Structure of the State Allocation Board Little Hoover Commission

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Comparing Governance Arrangements

I first examine the governance arrangements in several states with prominent school construction institutions: Arizona, Kentucky, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, and Wyoming. These states represent a range of different governance arrangements and help to provide a framework for thinking about options for California. I group these states into four basic types of governance structure:

Program within Department of Education or State Board of Education: In Maine, school districts submit proposals for school construction or renovation to the Maine Department of Education (MDOE). The MDOE then vets and prioritizes these projects and submits them to the Maine State Board of Education, which decides the projects that will be funded.

The North Carolina Public School Building Bond Act of 1996 is administered and supervised by the State Board of Education.

Quasi-Autonomous Agency: The Massachusetts School Building Authority (MBSA), created in 2004, is an independent agency, though largely under the control of the State Treasurer.¹ The seven-member board of the MSBA consists of the State Treasurer, who serves as Chairperson, the Secretary of Administration of Finance, the Commissioner of Education, and four members appointed by the State Treasurer with expertise in facility planning, architecture, or construction and education. MBSA also has a statutory advisory board with 17 members representing a wide range of stakeholders. The Executive Director (who also sits on the advisory board) is appointed by the State Treasurer.

Kentucky has a very similar structure. The School Facilities Construction Commission is an independent agency attached to the Finance and Administrative Cabinet. The Commission is composed of 8 members appointed by the Governor.² An unusual feature of the Kentucky Commission is that seven of these members must represent one of the State's Supreme Court Districts, while the 8th member represents the state as a whole.

¹ The founding statute states that the MBSA shall be an independent agency not subject to the control of any other executive office, department, etc.

² No specific expertise is required for appointed members.

The Commission is staffed by a Director and support personnel, who are appointed by the Commission itself.³

The Ohio School Facilities Commission (OSFC) was created in May 1997 as a separate and distinct state agency to administer school construction and rebuilding. This function was previously under the jurisdiction of Ohio's Department of Education. The OSFC is comprised of three voting members and four non-voting members from the state legislature. The three voting members are the Director of the Office of Budget and Management, the Director of the Department of Administrative Services, and the State Superintendent of Public Instruction. The four legislative members include two members from the Ohio Senate and two members from the House of Representatives. The Commission appoints its own Executive Director.

The Arizona School Facilities Board consists of nine voting members appointed by the Governor and who represent different groups and perspectives (school district finance, taxpayers, school construction, architecture, school facilities management, demography, teacher, engineer, private business). In addition, the Superintendent of Public Instruction serves as a non-voting member. The Governor appoints the Chairperson and the Executive Director.

The Wyoming School Facilities Commission was established by the legislature in 2002. The seven member commission is comprised of the state superintendent of public instruction, a member of the state board of education, three members appointed by the Governor, who have experience in engineering, construction, and building design, and two members appointed by the State Superintendent of Public Instruction with knowledge of facility planning and management and educational policy. The Governor appoints the Executive Director.

The development of quasi-autonomous agencies in Arizona, Kentucky, and Wyoming was driven by court cases charging inequities in school funding.⁴

Public Corporation Model: By executive order, the Governor of New Jersey delegated authority for school construction from the New Jersey Economic Development Authority (NJEDA) to a new subsidiary corporation called the School Construction Corporation (SCC).⁵ The SCC is composed of 8 ex-officio members of various state agencies (education, labor and workforce development, treasury, commerce(2), economic growth, tourism, and economic development), plus seven public directors appointed by the Governor, including 3 from the Board of the Economic Development Authority and 4 with experience in education, finance or construction. A Chief Executive Officer, elected by the Corporation, runs the day-to-day operations.

³ An analysis of the Commission's activities is reported in "A Review of the School Construction Commission," Research Report no. 332, Legislative Research Commission, February 10, 2006. This report finds that school district superintendents are generally happy with the management of the Commission, but provides little insight into governance arrangements.

⁴ David G. Sciarra, Koren L. Bell, and Susan Kenyon. 2006. *Safe and Adequate: Using Litigation to Address Inadequate K-12 School Facilities*. Education Law Center.

⁵ The NJEDA's mission is to stimulate business development, job creation and community revitalization.

Interagency Committee Model: The Aging School Program (ASP) provides State funds to all school systems in the State of Maryland to address the needs of their aging school buildings. The ASP is administered by the Interagency Committee on School Construction (IAC), which was established in 1971. The Interagency Committee has five members, including ex-officio representatives from three public agencies: the State Superintendent of Schools, who chairs the Committee, Director of the Maryland Office Planning, and the Secretary of the Department of General Services. The Senate President and House Speaker each appoint one public member. The three participating agencies furnish staff to the Committee. Each member has an appointed designee and staff members who work with the Committee. The Board of Public Works also provides staff and assumes the responsibilities for the coordination and administration of the program. The Executive Director is appointed by the Committee.

Governance Structure

In Kentucky, Ohio, Maryland, and New Jersey, the Executive Director is appointed by the School Construction Commission. In Wyoming and Arizona, the Executive Director is appointed by the Governor. In Massachusetts, the Executive Director is appointed by the State Treasurer. In California, the State Allocation Board (SAB) and Office of Public School Construction have an executive officer appointed by the Governor who serves at the discretion of the Department of General Services. The assistant executive officer is appointed by the SAB. Accountability is therefore more divided in California than in these other states, where the Executive Director is appointed either by the Commission or the Governor (or by an executive officer of the Governor in the case of Massachusetts).

Board Composition

The different board compositions reflect several principles for organizing boards.

Arizona has a “public commission model” with representation from citizens representing different groups. Wyoming’s model also has elements of a public commission model, which an emphasis on representing experts on the commission. Kentucky’s board must represent each of the State’s Supreme Court districts.

Most of the state institutions described above are focused in the executive branch. In Massachusetts, the State Treasurer appoints four of the MSBA board members and the Executive Director. In Arizona, Kentucky and New Jersey, the members of the board are appointed by the Governor. In Wyoming, the Governor appoints five of the board members, while the State Superintendent of Public Instruction appoints two board members. Ohio is the only state reviewed above that has direct legislative representation, with 4 non-voting legislative members. Maryland, however, has two public members appointed, respectively, by the Senate President and the House Speaker.

Although most programs in other states are oriented toward the executive branch, they differ in terms of the specific agency to which they are attached and in terms of their desire to promote interagency coordination.

Wyoming is education-oriented (with two members appointed by the State Superintendent), though it also has an “expert commission” aspect. Massachusetts is Treasury-focused, but also represent the departments of Finance and Administration (e.g., general services) and Education. New Jersey’s SCC is a subsidiary of the New Jersey Economic Development Administration (EDA) and this agency has majority representation on the board. However, 8 other agencies are also represented.⁶ Ohio and Maryland are the most interagency boards. Ohio designates representation from Management & Budget, Administrative Services (e.g., general services), and Education. Maryland is the most explicitly “interagency” model among the states, with designated representation from education, planning, and general services.

With a legislative majority on the SAB, California is an exception in terms of strong legislative representation (Maryland is a partial exception, but legislative representation is indirect). The SAB also has strong interagency representation, with designated representation by Finance, General Services, and the Superintendent of Public Instruction.

These arrangements certainly create opportunities for exacerbated tensions between the legislative and executive branch, adding to the tension created by the Governor’s appointment of the Executive Director. Strong legislative representation certainly has the advantage of allowing close legislative oversight of the SAB. However, it also has the potential of politicizing allocation decisions.

Rules of Operation

In establishing Commissions, most of the states described above also specify some rules for how and when meetings will be conducted, how a Chair will be named, and how the public will be notified of meetings. I provide some examples below.

Meeting Rules: Arizona specifies that meetings will be held whenever board members feel they are necessary. A majority of board member is necessary for a quorum. In Ohio, the founding statute requires the Commission to meet at least once a year, but specifies

⁶ New Jersey’s corporation model was designed to speed up the implementation of the program and is partly buffered from its parent agency, the Economic Development Authority. A committee charged with reviewing the operation of the New Jersey School Construction has recently argued that it should be reorganized as an agency within the Department of Education. The proposed successor organization would no longer be a subsidiary of the Economic Development Authority and the requirement that half the board come from that agency would be dropped. (*Report to the Governor by the Interagency Working Group for School Construction*, March 12, 2006. http://www.njscc.com/Archive/2006/03/03.15.06/REPORT_TO_THE_GOVERNOR.pdf; *Report to the Governor by the Interagency Working Group for School Construction*, March 12, 2006. http://www.njscc.com/Archive/2006/03/03.15.06/REPORT_TO_THE_GOVERNOR.pdf)

that regular meetings will be held, as determined by the Chair. Two (out of three) voting members will constitute a quorum. The New Jersey School Construction Corporation by-laws indicate that meetings will be held regularly in accordance with decisions of the board and that 8 (of 15) members must be present for a quorum.

Chair: In Kentucky, the Chair is initially appointed by the Governor, but thereafter elected by the membership. In Ohio, the Chair is elected. In Maryland, the State Superintendent of Schools is designated as the Chair and in Massachusetts, the State Treasurer is the designated Chair.

Public Notification: Arizona specifies that the Commission will comply with notice and hearing requirements. Ohio's statute dictates public notification of meetings. New Jersey's meetings must be held in accordance with the State's Open Meeting Rules.

As the Little Hoover Commission letter indicates: "The law is silent regarding the operation of the board and it has not adopted formal rules of operation. Consequently, the board appears to be governed largely by tradition, including being chaired by the Department of Finance."

I know of no specific liabilities of the current informal rules for governing the SAB. The website suggests regular and well-managed meetings. The rules of other states tend to be quite general and to delegate the details of operations to the Commissions. However, the Little Hoover Commission may want to consider the issue of the designation of the Chair in light of any larger reforms it suggests.

Fiscal Relations between the SAB and the State

All of the recently created school construction commissions (Arizona, Kentucky, Massachusetts, Ohio, and Wyoming) control their own staffs. The only state with a situation like California's is Maryland, which has staff "seconded" from each of the participating agencies in addition to staff and management direction from the Board of Public Works. It is interesting to note that, like California, Maryland's program is an older one (1971) and has strong legislative representation.⁷

The separation of a "policy board" from agency staff is not necessarily an unusual arrangement, but it may contribute to legislative-executive tensions, especially if the executive officer is appointed by the Governor and the assistant executive officer is appointed by the SAB. It is certainly possible that this arrangement could create operational inefficiencies, unclear reporting relationships, and administrative confusion.

Conclusion

⁷ For the history of the State Allocation Board, see Joel Cohen, 1999. "School Facility Financing: A History of the Role of the State Allocation Board and Options for Distribution of Proposition 1A Funds," California Research Bureau.

By contrast with school facilities commissions and programs in other states, California's current governance arrangement pulls the school construction program in different directions. The SAB has strong legislative board representation, but its executive leadership reports primarily to the Governor; it has an administrative home in the Department of General Services, but it is chaired by the Department of Finance. A Madisonian would admire the way that this structure embodies the separation of powers; a Hamiltonian would object to its cross-cutting lines of authority.⁸ If the goal is to clarify and tighten lines of authority, a quasi-autonomous agency model along the lines of Arizona, Kentucky, Massachusetts, Ohio, and Wyoming might be considered. The SAB and the OPSC would then be reorganized as a consolidated and independent operating authority. Executive branch control of this authority would be consolidated by allowing the membership of this authority to be appointed by the Governor or to reflect ex-officio agency representation. The Chair could be appointed, designated ex-officio, or elected by the board. The new authority would appoint its own executive director, who would be responsible for appointing the authority staff.

If there is a desire to maintain strong legislative branch representation on the SAB, then it is probably particularly important that the Board be allowed to appoint its own executive director.

⁸ Public administration scholarship often contrasts Madisonian and Hamiltonian perspectives as competing traditions of agency design. See Donald Kettl. 2002. *The Transformation of Governance: Public Administration for 21st Century America*. John Hopkins University Press.