

State Allocation Board Assistant Executive Officer Statement
Little Hoover Commission
May 24, 2007

The following testimony is limited to the observations of the assistant executive officer of the State Allocation Board and is not intended to represent the opinions of the State Allocation Board

Governance Structure

The executive officer (EO) to the Office of Public School Construction (OPSC) is, by law, appointed by the Governor and serves at the pleasure of the director of the Department of General Services. By tradition, the State Allocation Board (SAB) gives the OPSC executive officer the additional title of SAB executive officer.

The current reporting structure for the EO creates bifurcated priorities when the policy concerns of the Administration are counter to the policy concerns of the SAB as a whole. While the Administration has daily interaction with the EO regarding the work of the OPSC, the legislative Board members typically have only monthly access to the EO. The EO must at times relinquish the best interests of the SAB as a whole in favor of accommodating the interests of her immediate and daily supervisors.

The Board has the statutory responsibility and authority to develop policy for the state school facility construction programs yet too often the information provided to the SAB by OPSC is limited to the information needed to support the Administration's policy direction. The SAB legislative members are generally unaware that the information has been narrowed because the members' perceive that OPSC, as staff to the Board, is providing balanced and comprehensive information for the Board's policy-making decisions, unaware that OPSC must first serve the Administration. This reporting structure allows a minority of the Board, the Administration appointees, to influence the information provided to the Board majority; the legislative appointees and the Superintendent of Public Instruction.

The SAB majority members' ability to make well-informed policy decisions is further weakened by the use of Administration legal counsel. In preparation for reports to the Board, OPSC will, at times, ask counsel to form legal opinions based on OPSC/Administration policy direction. Limiting legal interpretations to comport with OPSC policy direction narrows the Board's options in determining policy. As a result, OPSC essentially becomes the policy making body while the SAB policy-making authority is undermined. As in the case of OPSC staff, the Board again assumes that legal counsel is acting in the best interest of the SAB to make well-informed policy determinations, unaware that counsel has more immediate reporting responsibilities to the Administration.

The Board may wish to consider replacing its current counsel with counsel from the Office of the Attorney General (AG). The AG serves as counsel for the State of California and often provides counsel to state boards and commissions.

The State Allocation Board (SAB) has the statutory authority to appoint an assistant executive officer (AEO) to report directly to the SAB regarding matters under the SAB purview. The AEO is the only SAB employee that is independent of the Administration. With one staff working for the Board as a whole and 150 plus OPSC staff working for the Administration, a severe imbalance is created between the interests of the Board as a whole and the interests of the Board minority, the Administration appointees. The position of the AEO is charged with providing comprehensive information to the Board that can broaden the Board's policy options and that can be contrary to the information provided by OPSC. The OPSC response to the AEO sharing of contrary information with the Board has been to limit AEO access to program information. This lack of access has hindered the AEO's ability to ensure the Board has balanced and complete information.

The Board could be better served with the OPSC EO and her staff reporting directly to the Board without the other reporting obligations to DGS or DOF. In serving only a single supervising body, the EO and her staff would have clarity in their service to the Board and the community the Board serves; and the Board members could have confidence that staff's first priority would be to assist the Board as a whole in developing good policy. A model of this type of reporting structure is found at the Franchise Tax Board (FTB) that consists of two elected officials and one Governor Appointee. The FTB appoints an executive officer who is charged with overseeing staff operations and the information provided to the board. All FTB staff report only to the FTB-appointed executive officer and ultimately, the FTB. This model ensures the policy makers have access to complete and balanced information. It is crucial that a board have confidence that their staff is acting in the best interests of the board and the constituency the board serves. It is also essential that staff warrants that confidence.

Board Composition

The State Allocation Board is made up of three Administration appointees; DOF, DGS, and a Governor at large appointee, as well as, the Superintendent of Public Instruction (SPI) and six legislative members; three from each house with each house having a minority appointee. This composition serves the State of California well: the Administration representation ensures that the concerns and challenges relating to the technical administration of the bond funds are considered in policy development; the SPI contributes an in depth understanding of the academic needs of our pupils and the educational community; and the legislative members, informed by their constituencies, ensure the concerns of parents, students, teachers, school administrators and the broader community are heard. Of course all Board representatives can and do share the concerns of the other members, but each brings a key perspective that contributes to good, balanced policymaking. It is essential that all the roles represented on the Board continue.

It is equally imperative that the elected members continue to constitute the majority of the Board so the people of California are fully represented in the investment of their tax dollars.

Rules of Operation

The SAB is currently staffed by Administration employees and chaired by an Administration staff appointee despite the fact that the majority of the Board consists of constitutional and legislative elected officials. The chair has influence over the Board staff, agenda, and reports; giving the minority reign over board operations. A legislative vice chair was elected by the Board last year in an attempt to remedy the uneven weight given to minority members through the chair and staff. This has not resulted in a balance of power for the Board as the minority chair continues to have greater authority over Board operations than any of the majority members. To ensure fitting oversight of Board operations, the Board may want to consider electing a chair for terms of 2-3 years by a majority vote of the Board.

A central issue for the SAB in policy development is in balancing its fiduciary responsibilities with quality, long-term investment of capital outlay bond dollars. It is always valuable to have the voice of DOF at the table in policy discussions to be the principal voice for fiscal prudence, but it is equally important not to limit policy discussions to fiscal prudence. For example, it could be argued that it is fiscally prudent to allow only the less expensive portable buildings to be funded with state bond dollars rather than the more expensive permanent classrooms, yet it would be a shortsighted investment of our tax dollars to fund buildings that will need to be replaced in 20 to 30 years. Unfortunately, the current reporting structure for OPSC allows DOF to dull the voices of others at the policy discussion table. It is essential that the representatives of the people of our state, the elected officials appointed to the Board, have a strong voice in making quality investment decisions with tax dollars on behalf of California taxpayers.

Fiscal Relationship between the SAB and the State

As discussed previously, OPSC reports to DGS. Though it is unclear what specific services are provided by DGS to OPSC, DGS charges a “fee for service” to OPSC representing 7.5% of the annual OPSC administrative budget, which is largely funded with General Obligation Bonds. Additional DGS fees are charged to OPSC for the use of DGS legal counsel which serves as counsel to the Board and OPSC.

DGS has at least one OPSC staff position housed in DGS and funded from the OPSC budget: the legislative staff services manager who manages the legislative operations for DGS. The staff services manager has some OPSC legislative responsibility but mainly serves the legislative needs of DGS and the other departments overseen by DGS.

In the past DGS has directed OPSC to provide personnel to work in DGS while the staff positions continued to be charged the OPSC budget. Those staff positions served DGS for weeks, months and, in one case, for longer than a year, leaving OPSC understaffed.

There is an amount of redundancy in operations between the SAB, OPSC, DGS and the agency DGS reports to, The State Consumer Services Agency (SCSA). An example of this redundancy can be found in the regulatory process. SAB regulations are typically vetted by the SAB Implementation Committee (Committee) prior to being considered by the SAB. The Committee consists of school facility construction stakeholders such as school district and county offices of education representatives, architects and builders, as well as OPSC and DOF. After careful consideration by the Committee, OPSC, and often DGS legal counsel, the regulations then go to the SAB for approval. After SAB approval, and prior to being submitted to the Office of Administrative Law (OAL), the regulations first must go through a "399" process that requires approval by the administering body. For SAB regulations this means up to six members of DGS staff must review the regulations followed by six members of SCSA staff. These 12 reviews are done sequentially. This process often requires OPSC staff to track the review sequence and to locate missing documents lost between reviews. A typical DGS/SCSA regulation review process takes 3-6 months. The regulations must then go to DOF where a number of DOF staff further review the regulations. Finally, the regulations are sent to OAL to begin the OAL process. This lengthy process is redundant of the work of the Committee, OPSC and the SAB, and has delayed the implementation of school facility program regulations for up to a year or more.

If the OPSC EO and staff reported directly to the SAB, the 399 process would have been essentially completed upon Board approval of the regulations. The regulations would then be reviewed by DOF for fiscal impacts and then sent on to OAL to complete the public vetting process.