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May 10, 2017

Assembly Member Patrick O'Donnell  
State Capitol, Room 2196  
Sacramento, CA 95814

**RE: \$2.4 Billion in K-12 School Projects Waiting Funding from Proposition 51**

Dear Assembly Member O'Donnell:

At the meeting scheduled for May 24, 2017 the State Allocation Board (Board) will be presented with detailed recommendations by the Office of Public School Construction (OPSC)/Department of Finance (DOF) when the Board will be asked to take specific actions that, if taken, will have negative and lasting effects upon school districts seeking state bond funding for \$2.4 billion in project funding and will be in direct violation of law. The anticipated recommendations are contrary to the provisions of Education Code 12.5 as these existed prior to the election on November 8, 2016 and are specifically preserved by the unambiguous language of Proposition 51 approved by the people at that election. Chapter 12.5 is the State's School Facility Program (SFP); it may not be changed by fiat as intended by OPSC/DOF.

The purpose of this letter is twofold:

1. Inform the Board as to facts that have produced the circumstances identified above; and
2. Offer alternative recommendations to the Board

**FACTS: The Lists of Projects**

Proposition 51 was approved in November 2016, six months ago. To date no bonds have been sold and no specific plan has been brought to the Board to expedite the funding of the \$2.4 billion in K-12 projects in the "Pipeline" that have been filed properly according to existing law and rules and are waiting for the Board to take action to fund them or at least to prepare them for immediate funding at the next bond sale in October 2017.

The Director of the DOF has proposed that only \$590 million in K-12 school bonds be sold in budget year 2017-2018. With that inadequate level of bond funding available to the Board, should it continue into the future as proposed by DOF, it will take four (4) years to fund the current "Pipeline" of projects in-house, and it will then take ten (10) years to spend the \$6 billion in new construction and modernization funds authorized by the voters. Projects now in the "Pipeline" will not be fully funded until March or April of 2021. Other projects will not be funded until 2027. (Please see the attached chart entitled Proposition 51 New Construction and Modernization Cash Flow Analysis).



The projects in the “Pipeline” include \$380 million on the “approved as unfunded” list and \$2.0 billion on the “acknowledged” list. The Board took action in August 2012 to create a separate, third list of projects ostensibly for purposes of protecting the state from liability and not obligating the state to fund projects submitted thereafter should no future state bond be approved or if a substantially different state school facility program were to be enacted. In order to create that different and segregated third list and with the intent to discriminate as to how those projects were treated, although legally submitted under existing statutory provisions the Board at that time contrived a new regulation, 1859.95.1 (a). That third, segregated projects list is now referred to commonly as the “Acknowledged List,” as these have been acknowledged by the Board as having met all the eligibility and program provisions required for funding approval. In order to be placed on the acknowledged list, the local district governing boards were required to adopted resolutions acknowledging that neither the state’s SFP and nor a state bond may exist into the future. Those resolutions were a device of the Board used to further segregate the acknowledged list projects.

**FACTS: The SAB Regulation that Created Acknowledged List is Now Moot**

With the passage of Proposition 51, the \$9 billion state school bond, SAB regulation, 1859.95.1 (a) is no longer operative. The Board’s action in 2012 is moot. The regulation ceased having force and effect as of November 9, 2016. At that time, the Board should have been alerted formally that funding authority had been restored and that the SAB regulation, 1859.95.1 (a), is no longer operative.

**FACTS: With Passage of Proposition 51 Bond Authority is Available and Only One List Should Exist: The Lack of AB 55 Loans List**

The OPSC persists in maintaining an “Acknowledged List” and continues to act outside the scope of Board regulations by failing to properly process projects filed after November 9, 2017. The projects on the Acknowledged list and all projects filed with OPSC since the November 2016 election are actually projects approved with bond authority but absent AB 55 loan funding. (Please see the historical detail below about the “lists.”). There is no longer need for three lists. Only one list should continue to be kept and processed by OPSC: the lack of AB 55 loans list. Again, the Board has not been advised of these facts which ensue as the result of the old regulation dying with voter approval of Proposition 51.

**FACTS: The DOF Proposed Grant Agreement Exceeds Program Statutory Requirements**

The fact that Chapter 12.5 of the Education Code is preserved through Proposition 51 illuminates the matter of the proposed grant agreement. We know that an operational audit of OPSC by DOF, found fault with the OPSC handling of audits of school districts funded through the SFP. DOF by some reasoning not fully articulated by the agency has assumed license to propose specific requirements for school district applicants to the SFP that exceed existing law. Imposing new conditions not specified or contemplated in existing statute such as the proposed agreement as written will serve only to create conflict.

What has been articulated by DOF is that the proposed grant agreement must be adopted by the Board and thereafter signed by each district for each project or bond funds would not be made available to the Board for making apportionments. In short, DOF has threatened to hold district



projects hostage pending acquiescence by the Board to adopt and district representatives to submit to the demand to sign an agreement that exceeds program statutory requirements and intends to do so retroactively.

Rather than seeking to trap districts into giving away existing authority to spend funds and control projects secured by statute in Chapter 12.5 of the Education Code we believe that DOF should use the mechanism of an agreement to simplify the approval and funding process within the regulation-leaden SFP. Moving projects to the construction phase more efficiently will build trust in state government and local schools: Actual school construction work is highly observable in a community as are the jobs that each project creates.

## RECOMMENDATIONS

CASH respectfully recommends that the Board take the following action at the meeting scheduled for May 24, 2017:

1. Direct that OPSC rename the projects on the “approved as unfunded” list as “lack of AB 55 loans” projects and prepare these projects for immediate funding upon the sale of bonds in October 2017;
2. Direct that OPSC immediately cease the segregation of the projects on the “acknowledged” list as such, including projects being filed and include all such projects on the “lack of AB 55 loans” list in date order as has been the established practice;
3. Direct OPSC to revise the proposed agreement with the intent of collecting all of the requirements of certification of the SFP by applicants to the Program, and only those requirements without embellishment, as these requirements existed on January 1, 2015;
4. Direct OPSC to prepare the newly drafted and unembellished agreement by June 5, 2017 and present it at a stakeholder meeting;
5. Direct OPSC to present the newly drafted and unembellished agreement with comments and recommendations of stakeholders to the Board on June 28, 2017;
6. Direct OPSC to commence the work to gather all projects to present the newly drafted and unembellished agreement with comments and recommendations of stakeholders to the Board on June 28, 2017;
7. Direct that OPSC bring to the Board all projects on the NEW “lack of AB 55 loans” list currently totaling \$2.4 billion, in date order as is the practice, with a schedule of anticipated funding dates for each project at the meeting planned for June 28, 2017;
8. Direct OPSC to communicate to each applicant district the anticipated funding dates for each “lack of AB 55 loans” project in the listing of \$2.4 billion awaiting funding;
9. Direct OPSC to use an appropriate portion of the first bond sale in October 2018 to hire staff necessary to process all existing applications to the Board on the list of \$2.4 billion dollars in-house currently by December 2018;
10. Direct OPSC to commence bringing newly filed projects to the Board monthly for approval in preparation for funding as bond funds become available.

**IT IS ESSENTIAL THAT THE BOARD UNDERSTAND AND RECOGNIZE THAT THE LISTS UNDERScore THE LOCAL COMMITMENT TO SAFE, WELL MAINTAINED K-12 PUBLIC SCHOOLS BECAUSE OF THE MATCHING SHARE REQUIRED TO ACCESS STATE BOND FUNDS**



School districts must spend local general obligation bond funds, developer fees and/or other limited capital funding resources in order to meet strict SFP requirements prior to submitting projects to the state for funding. Districts spend the required matching share first. The \$2.4 billion in projects waiting for state funding therefore represents at least \$2.4 billion in local matching resources that have been spent. Local taxpayers voting for local bonds understand those bond dollars are a mandatory resource required to access state bond funding.

The goal of the DOF is an intentional one year delay in selling state bonds until November of 2017 whereas the authorization by the people to sell bonds came in November 2016. The associated goal is to severely limit the sale of Proposition 51 bonds annually so as to meter out project funding over the course of the next decade. Distrust of state government is heightened by such purposeful inattention to the will of the voters. A successful practice in school districts is to commence noticeable action of school construction within a few weeks of the passage of a local bond. Such action builds further trust between schools as local government and the voters.

Taxpayer support for local bonds in the future will depend upon the delivery of school projects promised in the past: The \$2.4 billion in state bond funding being held hostage by state agents may jeopardize future local bond elections. The distrust of state government will further impact local support for local bonds into the future.

Attached is a more detailed explanation of the facts addressed above.

Sincerely,

Don Ulrich, Chair  
Coalition for Adequate School Housing (CASH)

CC: Lisa Silverman, Executive Officer, OPSC  
Members, CASH Board of Directors