



CALIFORNIA STATE
PUBLIC WORKS BOARD

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ NINTH FLOOR ■ SACRAMENTO CA ■ 95814-3706 ■ (916) 445-9694

STATE PUBLIC WORKS BOARD
November 15, 2010

MINUTES

PRESENT:

Ms. Cynthia Bryant, Chief Deputy Director, Department of Finance
Mr. Scott Harvey, Chief Deputy Director, Department of General Services
Ms. Ann Barsotti, Chief Information Officer, Department of Transportation
Mr. Jim Lombard, Chief Administrative Officer, State Controller
Mr. Francisco Lujano, Deputy Treasurer, State Treasurer's Office

STAFF PRESENT:

Greg Rogers, Administrative Secretary
Nathan Brady, Assistant Administrative Secretary
Theresa Gunn, Assistant Administrative Secretary
Chris Lief, Assistant Administrative Secretary
Aurelia Bethea, Executive Secretary
Deborah Cregger, Staff Counsel
Marilyn Munoz, Staff Counsel
Stephen Benson, Budget Analyst
Natalie Daniel, Budget Analyst
Madelynn McClain, Budget Analyst
Carlos Ochoa, Budget Analyst
Andrew Ruppenstein, Budget Analyst

CALL TO ORDER AND ROLL CALL:

Ms. Cynthia Bryant, Chairperson of the Board and Chief Deputy Director of the Department of Finance, called the meeting to order at 10:00 a.m. Mr. Greg Rogers, Administrative Secretary for the Board, called the roll. A quorum was established.

The first order of business was approval and adoption of the Minutes from the October 25, 2010 meeting. Mr. Rogers reported that Board staff read and recommended approval of the minutes.

A motion was made by Mr. Harvey and Second by Ms. Barsotti to approve and adopt the minutes. The minutes were approved by a 5-0 vote.

BOND ITEMS:

Mr. Rogers noted there were 7 Bond Items on November's agenda. The 7 bond items were placed into two groups for discussion purposes. The first discussion was for Bond Items 1 through 3 which related to the defeasance of outstanding Public Works Board bonds for the Department of General Services Golden State Portfolio Asset Sale Transaction and Related Bond Defeasance. The second discussion was for Bond Items 4 through 7 that related to the Board's November bond sales.

BOND ITEMS 1 through 3

Mr. Rogers stated Government Code section 14670.13 authorizes the Director of General Services to sell 11 state office facilities. Of the 11 state office facilities DGS was authorized to sell, three have outstanding lease revenue bonds issued by the Board; these outstanding bonds needed to be defeased prior to DGS selling the buildings. The three office building facilities are: (1) the Capital East End Complex, Bond Item 1, (2) Certain Franchise Tax Board Facilities at Butterfield, Bond Item 2, and (3) the Department of Justice Office Building, Bond Item 3.

Mr. Rogers informed the Board of a tax compliance issue that was identified relating to some outstanding Department of Justice Building (DOJ) and Franchise Tax Board (FTB) bonds maturing in 2011. These bonds were not allowed to be redeemed/defeased under terms of the related Indenture (non-callable), and as a result did not fit within a "safe harbor" under the federal tax regulations relating to a "change in use" which is caused by sale of the related financed facilities. Therefore, a specific Treasury Regulation would not be satisfied. To address this problem, in July, the Board authorized staff to seek a closing agreement with the IRS under the Tax-Exempt Bonds Voluntary Closing Agreement Program (VCAP). A VCAP application was submitted to the IRS ensuring the sale of the DOJ and FTB facilities would not cause interest on those bonds to be taxable in violation of the Board's bond covenants. Orrick Herrington and Sutcliff worked with the IRS to reach an agreement that would allow the Board to defease these 2011 bonds for the DOJ and FTB buildings but, final resolution had not been reached at the time of this meeting. A draft closing agreement with the IRS is currently being reviewed. The Board will pay to the IRS a penalty out of the sale proceeds at the closing date.

Mr. Rogers also stated the Board's approval of the sale and authorization to defease the bonds in each of the three Bond items is conditioned upon the satisfaction of certain events occurring, those events were listed in the Resolutions. The delivery of a "Defeasance Opinion" and a "No Adverse Tax Opinion" by Orrick was a condition, this condition could only be satisfied with respect to the DOJ and FTB facilities if a mutually agreed upon closing agreement was reached as to the outstanding tax matter.

Mr. Rogers reported that on October 11, 2010, as required by Government Code section 14670.13, thirty days prior to executing a transaction for a sale of the buildings authorized in the statute, the Director of DGS submitted a report to the chairs of the fiscal committees of the Legislature regarding the terms and conditions of the transaction. On November 9, 2010, the Joint Legislative Budget Committee (JLBC) responded with a letter to the Directors of DGS and Finance referring to a Legislative Analyst Office report and highlighted two issues raised by the LAO letter. The first related to the LAO's belief the DGS fiscal estimates understated the net cost of the transaction, and the second related to the bidding and award process. The JLBC requested DGS to consider these issues and provide the Committee with a timely written response to the issues raised in the LAO report. The letter did not request DGS for an extended legislative review period or to stop the sales transaction until a response is received. On November 12, 2010 the DGS responded to the JLBC letter stating it "considers its economic analysis to be a fair, accurate, and rational estimate of costs associated with the sale/leaseback

transaction. The DGS letter further stated the department will provide details of competing offers once the transaction is finalized and the documents become public.

Mr Rogers recommended the Board adopt the staff recommendation adopting a separate Resolution for Bond Items 1 through 3 that would, in summary do the following:

Adopt a Resolution to:

1. Approve the form of:
 - a. The appropriate Termination agreements between the Board and the Department of General Services
 - b. An Escrow Agreement, between the State Public Works Board and the State Treasurer, as Escrow Agent related to each series of bonds; and
 - c. A Supplement to the Tax Certificate related to each series of bonds.
2. Upon satisfaction of all of the conditions set forth in each of the respective Resolutions:
 - a. Determine that the Sale Transaction will not breach any covenant or obligation of the Board and therefore, as issuer of the Bonds, and as required by Government Code section 14670.13(c)(2), approve the sale for the three different facilities financed with the Board's lease revenue bonds.
 - b. Authorize the execution and delivery of the documents specified above and of other documents and approve other related actions, all as necessary for the defeasance of the Bonds; and
 - c. Authorize and direct the State Treasurer to cause the defeasance of the Bonds in accordance with the provisions of the related Indentures and Escrow Agreements.

Mr. Rogers noted the estimated cost to defease the outstanding Bonds for the East End Facilities was \$400,705,000. The bonds that would be defeased were the Board's 2002 Series A lease revenue bonds. The estimated cost to defease the outstanding Bonds for the Franchise Tax board facilities was \$263,000,000. Three separate series of bonds would be defeased related to the FTB facilities - they were the 1998 Series A lease revenue refunding bonds and, the Board's 2003 Series D and 2005 Series A lease revenue bonds. The estimated cost to defease the outstanding Bonds for the Department of Justice Building was \$40,676,000. Two series of the Board's refunding bonds would be defeased – they were the 1998 Series A and the 2005 Series I.

Board member designee Mr. Francisco Lujano, Deputy Treasurer, State Treasurer's Office and Mr. Jim Lombard, Chief Administrative Officer, State Controller Office both read prepared statements from the State Controller and the State Treasurer opposing the Sale/Lease back and these three bond items.

There was also verbal public opposition to the Sale/Lease back of the state buildings. Five guest speakers spoke out against the bid process and or stated in their opinions that this transaction is bad business for the State of California. One speaker voiced his support.

Mr. Scott Harvey informed the Board that the transaction was not a rush to judgment; the process was carefully studied and carefully analyzed. He stated that there has been transparency and it is a good decision now.

There were no additional questions or comments from the Board or the public.

A motion was made by Mr. Harvey and Second by Ms. Ann Barsotti to approve and adopt the resolution Bond Item 1. Bond Item 1 was approved by a 3-2 vote, with the Treasurer and Controller's representatives voting no.

A motion was made by Mr. Harvey and Second by Ms. Cynthia Bryant to approve and adopt the resolution Bond Item 2. Bond Item 2 was approved by a 3-2 vote, with the Treasurer and Controller's representatives voting no.

A motion was made by Mr. Harvey and Second by Ms. Ann Barsotti to approve and adopt the resolution Bond Item 3. Bond Item 3 was approved by a 3-2 vote, with the Treasurer and Controller's representatives voting no.

BOND ITEMS 4 through 7

Mr. Rogers stated there were four bond items on the agenda for the Boards consideration related to the Board's pending Bond sales for November 2010.

Theresa Gunn provided an overview of the bond sales and some common information prior to the Board taking action on each individual bond item. Ms. Gunn informed the Board the bond items represented the Board's two bond sales this fall, a taxable and tax-exempt bond sale. If they are approved, the bonds would be priced the week of November 22nd, and close a week later. The total bond issuances are estimated to be \$382.6 million and the proceeds would fund a total of 9 projects that included two Department of Mental Health projects, two Judicial Council courthouses, two California State University projects, one Department of General Services Office building, one Department of Corrections and Rehabilitation project, and one Department of Developmental Services project. Ms. Gunn requested the Board to approve and adopt 4 Resolutions, one for each series. These resolutions if approved and adopted would authorize the sale and issuance of the Specified Series of Bonds of the State Public Works Board for the specified projects. Additionally, the Resolutions would also approve the form of and authorize the execution of the Supplemental Indentures numbered 102 through 105, to the Board's Master Indenture, Site Leases and Facility Leases, including the First Amendment to the Department of Mental Health's Atascadero Hospital Addition Facility Lease, Continuing Disclosure Agreements. Further the Resolutions will authorize the delivery of 2 Preliminary Official Statements and 2 Official Statements, one for the Series E and F and one for the Series G and H, as well as other related actions in connection with the issuance, sale and delivery of said revenue bonds. Ms. Gunn pointed out that due to recent changes to the Security and Exchange Commission's Rule 15c-2-12; a number of changes were made to the Board's standard Continuing Disclosure Agreement in order to conform the Agreement to the recent rule changes.

Bond Item 4: Ms. Gunn stated that these bonds, the State Public Works Board 2010 Series E Federally Taxable Bonds to fund Various Capital Projects, specifically the Department of General Services 450 N Street Office Building and the Department of Mental Health's Upgrade of the Electrical Generator Plant at Patton, needed to be issued as federally taxable because of issues that surrounded the Office Building acquisition and for the Generator Project the Board was unable to meet the reimbursement timelines delineated in the Federal Tax Code for tax-exempt issuances.

Approval and adoption of the Resolution for Bond Item 4 would authorize the issuance and sale of the State Public Works Board 2010 Series E bonds, Federally Taxable bonds, for the projects and would approve the form of and authorize the execution of: the 102nd Supplemental Indenture to the Board's Master Indenture as well as the other forms of leases, continuing disclosure agreement and Official Statement. The estimated PAR value of the 2010 Series E bonds, for which Board authorize was sought, was \$95 million, with a not to exceed PAR of \$106 million and a not to exceed TIC of 8.25%.

Ms. Gunn recommended the Board adopt the staff recommendation to adopt the Resolution and approve Bond Item 4. There were no questions or comments from the Board or the public.

A motion was made by Mr. Harvey and Second by Mr. Lombard to approve and adopt the resolution Bond Item 4. Bond Item 4 was approved by a 5-0 vote.

Bond Item 5: Ms. Gunn informed the Board that these bonds, State Public Works Board 2010 Series F Federally Taxable Bonds to fund the Renovation of the Hospital Addition at Atascadero State Hospital, needed to be sold as federally taxable bonds because of a portion of the renovation work being performed has been determined by the Internal Revenue Service to not be eligible for tax-exempt financings.

Approval and adoption of the Resolution for Bond Item 5 would authorize the issuance and sale of the State Public Works Board 2010 Series F bonds, Federally Taxable bonds, for the project and would approve the form of and authorize the execution of: the 103rd Supplemental Indenture to the Board's Master Indenture a first amendment to the Facility Lease, as well as the other forms previously mentioned. However, the 103rd Supplemental Indenture, among other things, would designate the 2010F Bonds to be a Related Series of Bonds that would be secured on a parity basis with the Board's 2001A Bonds. Because these bonds are a related series of bonds, there was no site lease required and therefore, the resolution did not authorize the execution of a site lease. The first amendment to Facility Lease would amend the Facility Lease that was entered into when the 2001A bonds were issued. The resolution authorizes other documents to be executed that are necessary to effectuate the issuance of the 2010 Series F Bonds. The estimated PAR value of the 2010 Series F bond resolution is \$6.9 million, with a not to exceed PAR of \$8 million and a not to exceed TIC of 6.75%.

Ms. Gunn recommended the Board adopt the staff recommendation to adopt the Resolution and approve Bond Item 5. There were no questions or comments from the Board or the public.

A motion was made by Mr. Lombard and Second by Mr. Lujano to approve and adopt the resolution Bond Item 5. Bond Item 5 was approved by a 5-0 vote.

Bond Item 6: Ms. Gunn stated, approval and adoption would specifically approve and adopt the Resolution authorizing the issuance and sale of the State Public Works Board 2010 Series G bonds, Tax-exempt bonds, to fund the Judicial Council San Andreas and Hollister Courthouses, the Department of Developmental Services' Porterville Kitchen project, and the Department of Corrections and Rehabilitation's Mental Health Crisis Bed Facility project at the California Men's Colony. It would also approve the form of and authorize the execution of: the 104th Supplemental Indenture to the Board's Master Indenture as well as other forms. In order to correct a condition related to title to the real estate on which the Judicial Council San Andreas Courthouse would be constructed, the Resolution included authorization to accept a quit claim deed conveying a property right that had been held by the grantor of that property. The estimated PAR value of the 2010 Series G bonds was \$188 million, with a not to exceed PAR of \$224 million and a not to exceed TIC of 6.50%.

Ms. Gunn recommended the Board adopt the staff recommendation to adopt the Resolution and approve Bond Item 6. There were no questions or comments from the Board or the public.

A motion was made by Mr. Harvey and Second by Ms. Ann Barsotti to approve and adopt the resolution Bond Item 6. Bond Item 6 was approved by a 5-0 vote.

Ms. Gunn stated, if approved, Bond Item 7 would authorize the State Public Works Board 2010 Series H Tax-exempt Bonds to fund various California State University Projects, Specifically, the Storm and Nasatir Halls Renovation project located on the San Diego Campus, and the Science I Renovation project located on the Stanislaus Campus.

Approval and adoption of the Resolution for Bond Item 7 would authorize the issuance and sale of the State Public Works Board 2010 Series H bonds, Tax-exempt bonds, for the projects and would approve the form of and authorize the execution of: the 105th Supplemental Indenture to the Board's Master Indenture, as well as other forms of leases and other agreements. The estimated PAR value of the 2010 Series H bonds that would be authorized upon adoption of the resolution is \$93 million, with a not to exceed PAR of \$113 million and a not to exceed TIC of 6.50%.

Ms. Gunn recommended the Board adopt the staff recommendation to adopt the Resolution and approve Bond Item 7. There were no questions or comments from the Board or the public.

A motion was made by Mr. Harvey and Second by Mr. Lombard to approve and adopt the resolution Bond Item 7. Bond Item 7 was approved by a 5-0 vote.

CONSENT ITEMS:

Mr. Rogers stated the Consent Calendar consists of Items 1 through 11. However, last week staff received a letter from the Joint Legislative Budget Committee requesting further information for Consent Item 9, the Department of Corrections and Rehabilitations scope change letter for the DeWitt Nelson Correctional Facility Infill project. Thus, Consent Item 9 was pulled, and the Consent Calendar consisted of Items 1 through 8, 10 and 11.

In summary the items proposed:

- 3 requests to authorize funding for preliminary plans [Items 1-3]
- 1 request to authorize funding for preliminary plans and recognizing a reduction in acquisition costs [Items 4]
- 1 request to authorize acquisition [Item 5]
- 2 requests to establish scope, cost , and schedule [Item 6 and 11]
- 2 requests to approve preliminary plans [Items 7 and 10]
- 1 request to authorize the execution of (1)a Ground Lease with the County of Calaveras, (2)an Easement Agreement for Grants of Access, Utilities, and Repairs Easements with the County of Calaveras ,(3)a Right of Entry for Construction with the County of Calaveras [Item 8]

There were no legislative notification letters associated with the revised Consent Calendar.

Mr. Rogers recommended the Board adopt staff recommendation to approve the Consent Calendar consisting of Consent Items 1 through 8, 10 and 11.

Mr. Harvey requested Consent Item 5 be pulled for discussion after Board vote on the remaining consent calendar Items 1-4, 6-8, and 10 and 11.

There were no further comments or questions from the Board or the public.

A motion was made by Mr. Harvey and Second by Ms. Barsotti to approve Consent Calendar Items 1-4, 6-8, and 10 and 11. The Consent Items were approved by a 3-0 vote.

Mr. Harvey asked for clarity on two issues in regards to Consent Item 5 - Department of General Services/Department of Parks and Recreation Portola Redwoods State Park, Island Forest Site, San Mateo County—Authorize acquisition. The first question was in regards to the oil seepage in or around streams and the second being certain mineral rights. Mr. Ken Anderson, Acquisitions Chief - State Parks, addressed Mr. Harvey's concerns. Mr. Anderson informed the Board that oil seeps are normal in this part of the state, however; actual seeps in this particular property have not been identified. The minerals life estate reservation is not unusual for these type of properties. There haven't been any minerals identified for mining.

There were no further comments or questions from the Board or the public.

A motion was made by Mr. Harvey and Second by Ms. Barsotti to approve Consent Calendar Item 5. The Consent Item 5 was approved by a 3-0 vote

ACTION ITEMS:

Mr. Rogers noted we had two action items on this month's agenda both related to the Judicial Council of California, Administrative Office of the Courts. Mr. Nathan Brady of Board staff presented both Action items to the Board, and staff from the AOC were present to address any questions the Board may have on the two items.

ACTION ITEM 1: Mr. Brady informed the Board Action 1 was for the New North Butte Courthouse located in Butte County. At the September 20, 2010 Board meeting the Board authorized a contingent acquisition for the New North Butte Courthouse, allowing the AOC to clear certain conditions affecting title that precluded full acquisition approval at that time. This action would consider finalizing the acquisition approval. The Board action on September 20, 2010, included the following three conditions that the Board required to be met prior to authorizing acquisition;

(1) A duly authorized agreement(s) between the relevant parties releasing the subject property from the Meriam Park Development Agreement dated August 6, 2007 (Condition satisfied on October 21, 2010);

(2) The Department of General Services' review and approval of the agreement(s) referenced above prior to execution by the parties (Condition satisfied on October 5, 2010); and

(3) Satisfactory resolution of the title exceptions affecting the subject property related to one or more Chico Maintenance Districts (Condition satisfied on October 5, 2010).

Staff confirmed that all conditions had been satisfied and recommend authorizing acquisition. Mr. Harvey asked if staff would continue its due diligence in regards to paying any assessments that may be levied. To which Mr. Brady confirmed.

Mr. Brady recommended the Board adopt staff recommendation to authorize acquisition.

A motion was made by Mr. Harvey and Second by Ms. Barsotti to approve Action Item 1. Action Item 1 was approved by a 3-0 vote.

ACTION ITEM 2: Mr. Brady stated Action 2 was for the Administrative Office of the Court's New Santa Clara Family Justice Center located in Santa Clara County.

This action was to consider authorizing acceptance of a no-cost acquisition contingent upon the Administrative Office of the Courts satisfactorily completing the task listed below and direct the AOC to provide a reportable item at the appropriate regular scheduled Public Works Board meeting for final acquisition approval.

The condition precedent to final acquisition approval included, but is not limited to:

- (1) Satisfactory resolution of the final Pollution Liability Policy to ensure the terms and conditions in the Policy are as stated in the Property Acquisition Agreement.

The requested action would authorize the no-cost acquisition from the County of Santa Clara County of approximately 1.57 acres to construct a 20 room family justice center in the City of San Jose.

Mr. Brady recommended the Board adopt staff recommendation to authorize acceptance of a no-cost acquisition contingent upon the AOC satisfactorily completing the task listed below:

- (1) Satisfactory resolution of the final Pollution Liability Policy (Policy) to ensure the terms and conditions in the Policy are as stated in the Property Acquisition Agreement.**

Mr. Harvey asked why there was no standard indemnification clause in the Agreement and are there any red flags about why there is a Pollution Liability Policy. Mr. Brady informed Mr. Harvey that staff had done the appropriate review and there is minimal risk; however, as condition to giving the property to the state the County wanted to be indemnified. The state does not indemnify; therefore the Pollution Liability Policy is needed to address the needs of the County. **A motion was made by Ms. Barsotti and Second Mr. Harvey by to approve Action Item 2. Action Item 2 was approved by a 3-0 vote.**

OTHER BUSINESS

There were 2 Item under Other Business. Mr. Rogers stated the Item 1 was to adopt the 2011 State Public Works Board Calendar. The proposed calendar would move the monthly Board meetings back to the traditional meeting day of the Board, the second Friday of each month.

Mr. Rogers recommended the Board approve the calendar.

A motion was made by Mr. Harvey and Second Ms. Barsotti by to approve the 2011 Board calendar. The calendar was approved by a 3-0 vote.

The Other Business Item 2 was to recognize the 2010 Audited Financial Statements prepared by Gilbert and Associates for the Public Buildings Construction Fund and the High Technology Education Revenue Bond Fund. Mr. Rogers reported the audited financial statements were for the fiscal year ended June 30, 2010, and the auditors again issued an unqualified opinion on the financial statements for the Board's two funds. The financial statements were reviewed by staff and Mr. Rogers recommended the Board adopt staff recommendation to recognize the 2010 State Public Works Board Financial Statements.

A motion was made by Mr. Harvey and Second Ms. Barsotti by to recognize the 2010 Board Financial Statements. The motion was approved by a 3-0 vote.

REPORTABLES:

Mr. Rogers informed the Board there were no items to report approved by staff under the authority delegated by the Board.

NEXT MEETING:

Ms. Bryant announced the next Board meeting is scheduled for December 13, 2010, at 10:00am, at the State Capitol, in Room 113.

There were no comments or questions from the public.

The meeting was concluded at 11:03 am.