

CDE MEETING AGENDA



COLORADO
Department of Education

VISION

All students graduate ready for college and careers, and prepared to be productive citizens of Colorado.

MISSION

Ensuring equity and opportunity for every student, every step of the way.



Public School Capital Construction Assistance Board Agenda

Date & Time: Thursday, March 21, 2024 - 1:00pm-3:30pm

Location: Virtual – Microsoft Teams

Capital Construction Assistance Board Members:

Jane Crisler – Chair	Vaishali McCarthy	Lara Vincent
Wendy Wyman – Vice Chair	Matt Samelson	Michael Wailes
Kevin Haas	Wade Turner	George Welsh

- I. Call to Order
- II. Roll Call
- III. Approve Agenda
- IV. Approve Previous Meeting Minutes from: February 15, 2024
- V. Board Report
- VI. Staff Report
- VII. Discussion Items:
 - A. May Meeting Prep: What to Expect
 - B. May Meeting Prep: Draft Schedule
 - C. Legislation Discussion
 - D. August Retreat Priorities / Policy Review
- VIII. Decision Items:
 - A. Recapture Clause and Lease Purchase Guidance Revision
- IX. Future Meetings:
 - April 18, 2024 – Virtual
 - May 13-15, 2024 (9AM – 5PM) – Virtual
- X. Public Comment
- XI. Adjournment

CDE MEETING MINUTES



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Public School Capital Construction Assistance Board (CCAB) Meeting Minutes

Date & Time: Thursday, Feb 15, 2024 - 1:00pm-3:30pm

Location: Virtual – Microsoft Teams

Capital Construction Assistance Board Members:

Jane Crisler – Chair	Vaishali McCarthy	Lara Vincent
Wendy Wyman – Vice Chair	Matt Samelson	Michael Wailes
Kevin Haas	Wade Turner	George Welsh

- I. **Call to Order:** Meeting called to order by Jane Crisler at 1:010pm
- II. **Roll Call:**
Members Present: Vaishali McCarthy, Matt Samelson, Wade Turner, Lara Vincent, George Welsh, Michael Wailes, Wendy Wyman, Jane Crisler
Absent: Kevin Haas
- III. **Approve Agenda:**
Motion moved: Matt Samelson - *Approve agenda as presented.*
Second by: George Welsh
All for: Vaishali McCarthy, Matt Samelson, Wade Turner, Lara Vincent, George Welsh, Michael Wailes, Wendy Wyman, Jane Crisler
Absent: Kevin Haas
All opposed: None
Motion passed
- IV. **Approve Minutes: January 18, 2024**
Motion moved: Wade Turner - *Approve Minutes as written.*
Second by: Vaishali McCarthy
All for: Vaishali McCarthy, Matt Samelson, Wade Turner, Lara Vincent, Michael Wailes, Jane Crisler
Abstention: George Welsh, Wendy Wyman
Absent: Kevin Haas
All opposed: None
Motion passed
- V. **Board Report:**
 - Wendy attended the Walsenburg ribbon cutting ceremony recently. There was great community support for the project and everyone was very grateful to the BEST staff and board.

VI. **Staff Report:**

- Staff is working through and learning the new GAINS grant system.
- Finalizing Legislative reports.

VII. **Discussion Items:**

A. August Retreat Priorities/Policy Review

- Andy reviewed the recapture and lease purchase agreement topic.
- The group reviewed and discussed suggested revisions to the BEST Grant Award Letter.

B. May Meeting Prep

- Andy gave an overview of the tentative schedule for the preparations for our May grant review meeting.

C. Legislation Discussion

- There is a possibility of a new draft bill that will assist schools with HVAC needs. This currently does not affect the BEST program or staff.
- It is very early in the discussions of this potential bill.

D. FY25 Initial List of BEST Applicants

- Andy reviewed the list of initial applications received for the FY24 BEST grant round.
- We received approximately 57 grant requests requesting \$669 million from BEST with a project total of \$955 million.
- 11 projects are requesting over \$25 million with the largest request at \$64 million (total request of the eleven largest projects is \$480 million).
- 18 projects are requesting under \$1 million (total of these 18 projects is just over \$9 million).
- This list may change as we near the grant review meeting.

VIII. **Future Meetings:**

- March 21, 2024 – Virtual
- April 18, 2024 – Virtual
- May 13-15, 2024 - Virtual

IX. **Public Comment:**

None

X. **Adjourn:** Meeting Adjourned by Jane Crisler at 1:54pm



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: March 21, 2024

SUBJECT: What to Expect in Grant Review

ITEM TYPE: Discussion Item

BACKGROUND:

General discussion will be held with Board and Staff regarding how to approach the grant review process. Consider reviewing documents from a previous year. What questions can't be answered will inform additional review materials for the April meeting.

Summary books:

<https://www.cde.state.co.us/capitalconstruction/bestgrantinfo>

Agendas and minutes:

<https://www.cde.state.co.us/capitalconstruction/ccab-agendasminutes>

Guidelines and rules:

<https://www.cde.state.co.us/capitalconstruction/ccab-rules>

Below is a summary of board and staff focus for grant review and what staff expect from applicants in submittals. During application review leading up to the May meeting, CCAB should send questions to the director for staff response. Answers will be distributed to all board members. It helps if board members can provide staff with potential applicant questions before the May meeting.

CCAB Members should focus on “recommendations based on objective criteria,” giving feedback on the entire application, not just in your area of expertise. This is a high-level consideration of each project.

Does the solution “ensure the most equitable, efficient, and effective use of state revenues”?

Does the solution “protect the health and safety of students, teachers, and other persons using public school facilities” and “maximize student achievement by ensuring” the facility is “conducive to students' learning”?

“Taking into consideration Facility Insight Assessment data,” prioritize applications based on the criteria below. Also, “consider the condition of the entire public school facility” and “whether it would be more fiscally prudent to replace the entire facility.”

The evaluation tool will also identify the staff recommended priority number of each application:

1. Projects that address safety hazards or health concerns at existing public school facilities, concerns related to security, and projects designed to incorporate technology into the educational environment.
2. Projects that will relieve overcrowding, including but not limited to projects that will allow students to move from temporary instructional facilities into permanent facilities.
3. Projects that will provide career and technical education capital construction.
4. Projects that assist public schools to replace prohibited American Indian mascots.
5. All other projects.

This effort will result in “a prioritized list of projects (with an amount and type of financial assistance)” to submit to the State Board and the Capital Development Committee for their review (if applicable).

Staff are focused on assisting applicants in completing a clear and concise application. Applications may still have remaining issues or concerns when they reach the CCAB, so endorsement of every application should not be assumed. Staff may follow up with additional questions of applicants to identify any unusual factors and provide a summary in the staff comments of the evaluation tool. Staff comments are meant to be based on objective criteria, but may in some cases may point to larger questions the CCAB is encouraged to consider and ask either in the May meeting or before.

Below is an outline of some of the deliverables and considerations staff review with applicants to develop BEST grants.

- Due Diligence
 - Each grant application should include backup documentation of appropriate due diligence to identify the deficiencies and solutions within the application.
 - Due diligence deliverables include: master plan, engineering report/assessment, plans/diagrams, roof audit/assessment, completed questionnaires, detailed schedules and budgets, and more.

- Master Plans
 - A master plan is a comprehensive long-range plan intended to guide growth and development of a school district or charter school. It includes analysis, recommendations, and proposals incorporating: Facility Insight assessment and/or engineer's reports, educational adequacy, economic, community infrastructure, and land use data. It is based on community input, surveys, planning initiatives, existing development, physical characteristics, and social and economic conditions.
 - For replacement schools, major renovation and/or addition projects, a master plan is strongly recommended. They are not required, and BEST does not reimburse for the cost of the master plan development.
- Detailed Budgets
 - A Detailed Project Budget is provided for each application, using a standard excel format with several pages of line items. Staff reviews budgets to determine appropriate line items have been assigned costs, those costs appear to be in alignment with the scope and supported by backup estimates or quotes, and that the backup estimates appear to be complete.
- High Performance Certification Program (HPCP)
 - A facility that is substantially renovated, designed, or constructed with at least 25% state moneys and contains 5,000 or more of building square feet must follow the HPCP.
 - Certification criteria established by the Office of the State Architect. LEED/ US CHPS/ or Green Globes are the certification agencies.
 - If a project qualifies for HPCP but cannot recoup the increased cost within 15 years, an accredited professional shall submit a letter explaining the circumstance.
- History Colorado (HC)
 - At CDE's first notice of a potential BEST applicant involving a property or properties 50 years old or older, CDE will request a determination of historical significance from HC. We have been working with HC to identify project types that could be exempt from this consultation, in order to streamline the process.
 - HC may provide a determination of historical significance and provide comments regarding the project. If CDE determines to not implement them in its grant decisions, CDE and HC shall attempt to negotiate a solution. If a solution is not reached, either party may request resolution from the Governor.
 - For any property that HC concludes has historical significance that will be altered or demolished as a result of a BEST grant project in a manner that causes it to lose its historical significance as determined by HC, CDE will facilitate contact between HC and the applicable district to document the school for inclusion in the state library.
 - Because this is a local rule state, it has been the practice of CDE and the CCAB to encourage consultation with HC, but allow the building owner to make the final decision.

- Waivers
 - Statute allows an applicant to request, and the board to consider, a reduction in their calculated match percentage. Waiver letters provide an explanation of the necessity for the waiver, and also allows applicants an opportunity to address individual match factors and provide a measured reduction.
 - Waiver letters are subject to board approval, and a scoring tool is provided as a resource to assist in making that decision.
 - Board members score project applications on their merit without considering a waiver request. The waiver is voted on separately and a project can still be approved even when the waiver is denied.
- Statutory Limit Waiver
 - The board has no authority over a Statutory Limit Waiver.
 - A school district shall not be required to provide any amount of matching moneys in excess of the difference between the school district's limit of bonded indebtedness, as calculated pursuant to section 22-42-104, and the total amount of outstanding bonded indebtedness already incurred by the school district.
 - Board members score project applications on their merit without considering statutory limits.
- Supplementals
 - Itemized list of value engineering and/or cost reduction effort made to bring project into budget prior to requesting additional funds. Identify any items to be added back into project if awarded.
 - Comparative budget showing original grant detailed budget and current proposed total detailed budget, line by line.
 - If unprecedented escalation is claimed, escalation calculations with supporting material price comparison backup and/or third party price index data identifying the actual escalation experienced from time of original submission to supplemental grant submission. The percentage of escalation identified in the original budget must be deducted from escalation claims.
 - If critical scope was removed from the project to meet the original budget, itemized cost of scope to be reintroduced if supplemental grant is awarded.
 - Program plan submitted with original application and current program plan for the project, side-by-side and including the delta between each.
 - Detailed project schedule showing schedule/time impact of added funds.
- Return Grants/Capital Renewal Reserves
 - At a minimum, each qualifying grantee must commit to establishing a capital renewal fund and contributing 1.5% of per pupil base funding annually for purposes of maintaining the fund, starting the fiscal year after construction is complete. October 1 FTE pupil counts, from the facilities that were impacted by

- the BEST Grant, should be used to calculate the annual contribution. Grantees may contribute more if they so choose.
- A “major renovation” for purposes of the capital renewal requirement is considered any renovation with a cost that exceeds twenty-five percent of the value of the building.
 - Applicants who have previously received a BEST grant for a new construction or major renovation project will be asked to demonstrate the establishment and maintenance of such a fund for previously awarded projects as a factor for consideration in approval of this application.
 - Recapture Clause
 - The Grantee acknowledges that if the Grant is a BEST Emergency Grant or a BEST Cash Grant and the property or improvements impacted by the Grant is sold, abandoned, demolished, or extensively renovated in a manner that makes the Project work obsolete within a ~~five-year~~ **ten-year** period after completion of the Project, the Grant will be recaptured as follows: if the property is sold, abandoned, demolished or extensively renovated in a manner that makes the Project work obsolete within the first year after completion, 100% of the Grant shall be returned to the State of Colorado, with a ~~20%~~ **10%** reduction per year thereafter.
 - Growth in BEST Schools
 - Per statute, BEST must prioritize projects in a specific order. Projects that will relieve overcrowding in public school facilities are the second ranked priority, after projects to address health, safety, and security concerns. We strongly encourage applicants to undergo a master planning process to determine growth projections and size the proposed building appropriately. Well supported near-term growth projections are quite often factored into a BEST replacement facility, even when that facility is being replaced for health and safety reasons.
 - Applicants are encouraged to be judicious in their estimates. Not every school district expects growth, many have declining enrollment. The Capital Construction Assistance Board considers the grant proposals as presented to them, and in this case the requested project was awarded. Modularity, while not ideal, are a common solution for rapid growth nationwide, and are often used as a stopgap to accommodate that growth between bond elections to complete permanent additions.

STAFF RECOMMENDATION:

Review and be ready to discuss.

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

N/A



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: March 21, 2024

SUBJECT: May Schedule

ITEM TYPE: Discussion Item

BACKGROUND:

Staff and Board will review the order of review for the May meeting and answer any questions the board may have. All times below are approximate.

Current draft schedule is:

Day 1, major projects: 9:00AM – 3:45PM with two 15-minute breaks and a one-hour lunch. Call meeting to order at 9:00AM, reviews start at 9:30AM.

Day 2, smaller projects (roofs, HVAC, security, etc.): 9:00AM – 3:30PM with two 15-minute breaks and a one-hour lunch

Day 3, supplemental requests: 9:00AM – 11:00AM. Recess until 3:00PM to finalize CCAB scoring, and for staff to prepare the prioritized list for voting. If there are any technical difficulties, we will come back only to call a special meeting in the near future.

STAFF RECOMMENDATION:

N/A

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

Attached Review Order Draft

BEST 2023-2024 Draft Review Schedule

May 15-17th 2023

PROJECT CATEGORY (FOR REVIEW ORDER)	Staff Rep.	App ID	Rev Order	County	Applicant	New/Final Project Title - Staff	Start
1 New/Major		45	1	Adams	Adams County 14	MS Replacement	9:30:00 AM Monday
1 New/Major		36	2	Alamosa	Alamosa RE-11J	HS Renovation and Addition	9:45:00 AM
1 New/Major		30	3	Unspecified	San Luis Valley BOCES	School Replacement	10:00:00 AM
1 New/Major		38	4	Baca	Vilas RE-5	PK-12 Addition	10:18:00 AM
1 New/Major		43	5	Bent	McClave Re-2	PK-12 School Replacement	10:36:00 AM
1 New/Major		56	6	Crowley	Crowley County RE-1-J	Ward Intermediate Renovation and K-12 Addition	10:51:00 AM
Break							11:09:00 AM
1 New/Major		21	7	El Paso	Colorado School for the Deaf and Blind	West Hall Renovation and Addition	11:24:00 AM
1 New/Major		9	8	El Paso	Hanover 28	Prairie Heights ES Security Upgrades, Renovation, and Addition	11:39:00 AM
1 New/Major		33	9	Elbert	Kiowa C-2	PK-12 School Replacement	11:54:00 AM
1 New/Major		32	10	Jackson	North Park R-1	PK-12 School Replacement	12:09:00 PM
1 New/Major		18	11	Jefferson	Jefferson County R-1	Fletcher Miller School Replacement	12:27:00 PM
Lunch 1hr							12:42:00 PM
1 New/Major		26	12	Lake	Lake County R-1	ES Addition and Replacement	1:42:00 PM
1 New/Major		7	13	Logan	Frenchman RE-3	K-12 Major Renovation and Addition	2:00:00 PM
1 New/Major		31	14	Montezuma	Dolores RE-4A	MS and HS Renovation and Addition	2:15:00 PM
1 New/Major		49	15	Otero	Cheraw 31	K-12 Renovation and Addition	2:30:00 PM
1 New/Major		59	16	Park	Platte Canyon 1	ES and MS Consolidation	2:45:00 PM
Break							3:18:00 PM
1 New/Major		15	17	Phillips	Haxtun RE-2J	K-12 Renovation and Addition	3:03:00 PM
1 New/Major		13	18	Phillips	Holyoke Re-1J	ES Replacement	3:33:00 PM
1 New/Major		52	19	San Miguel	Norwood R-2J	PK-12 School Replacement	3:48:00 PM
Begin Day 2							
3 Other		54	20	Adams	Mapleton 1	Multiple School HVAC Upgrades	9:00:00 AM Tuesday
3 Other		2	21	Adams	The Pinnacle Charter School	K-12 Roof, HVAC Replacement and Security Upgrades	3:51:00 PM
3 Other		37	22	Alamosa	Alamosa RE-11J	ES/MS HVAC Upgrades	9:12:00 AM
3 Other		3	23	Arapahoe	Lotus School for Excellence	HVAC Replacement	9:24:00 AM
3 Other		48	24	Boulder	Boulder Valley Re 2	Boulder Prep. HS Roof Replacement, HVAC, and Security Upgrades	9:39:00 AM
3 Other		47	25	Boulder	Boulder Valley Re 2	New Vista HS Abatement and Demo	9:51:00 AM
3 Other		20	26	Boulder	Firestone Charter Academy	K-8 Safety and Security Upgrades	10:03:00 AM
3 Other		22	27	Delta	Delta County 50(J)	Multiple School HVAC and Security Upgrades	10:15:00 AM
Break							10:30:00 AM
3 Other		10	28	Eagle	Stone Creek School	K-8 Roof, HVAC, Safety, and Security Improvements	3:39:00 PM
3 Other		11	29	El Paso	Colorado Early Colleges Colorado Springs	K-12 Electrical, HVAC, and Security Upgrades	3:27:00 PM
3 Other		29	30	El Paso	James Irwin Elementary School - Howard	Howard ES Roof and HVAC Replacement and Security Upgrades	10:45:00 AM
3 Other		40	31	El Paso	James Irwin School - Astrozon	Astrozon K-12 Roof and HVAC Replacement	10:57:00 AM
3 Other		39	32	El Paso	Widefield 3	Janitell Jr. HS Roof and HVAC Improvements	11:09:00 AM
3 Other		60	33	Elbert	Agate 300	Gym Roof and HVAC Improvements	11:21:00 AM
3 Other		6	34	Garfield	Garfield 16	ES Health, Safety, and HVAC Improvements	11:33:00 AM
3 Other		8	35	Garfield	Garfield Re-2	ES Roof, Boilers, Window, and Door Replacements	11:45:00 AM
Lunch 1hr							11:57:00 AM
3 Other		24	36	Gunnison	Gunnison Watershed RE 1J	DW HVAC Upgrades	12:57:00 PM
3 Other		25	37	Gunnison	Gunnison Watershed RE 1J	DW Security Upgrades	1:09:00 PM
3 Other		19	38	Gunnison	Marble Charter School	HVAC and Roof Replacement and Safety Upgrades	1:21:00 PM
3 Other		34	39	Kit Carson	Bethune R-5	K-12 Plumbing and Sewer Upgrades	1:33:00 PM
3 Other		1	40	Larimer	Ridgeview Classical Schools	HVAC, Roof Replacement, and Security Upgrades	1:45:00 PM
3 Other		58	41	Las Animas	Trinidad 1	Fisher Peak ES Roof and HVAC Improvements	2:00:00 PM
3 Other		51	42	Moffat	Moffat County RE: No 1	ES and HS HVAC Upgrades	2:12:00 PM
3 Other		12	43	Morgan	Brush RE-2(J)	Thompson Primary Health and Safety Upgrades	2:24:00 PM
Break							2:36:00 PM
3 Other		53	44	Morgan	Wiggins RE-50(J)	Wiggins Event Center HVAC	2:51:00 PM
3 Other		44	45	Prowers	Alta Vista Charter School	Elevator Renovation	3:03:00 PM
3 Other		4	46	Pueblo	Pueblo County 70	Pueblo County HS Roof Replacement and Wastewater Improvements	3:15:00 PM
Begin Day 3							
2 Roof		50	47	El Paso	Harrison 2	Multi-School Roofing Replacement	9:00:00 AM Wednesday
2 Roof		16	48	El Paso	Peyton 23 JT	ES Roof Replacement	9:12:00 AM
2 Roof		42	49	La Plata	Ignacio 11 JT	ES Roof Replacement	9:24:00 AM
2 Roof		23	50	Larimer	Thompson R2-J	Multiple School Partial Reroof	9:36:00 AM
2 Roof		14	51	Ouray	Ridgway R-2	Secondary School Roof Replacement	9:48:00 AM
2 Roof		46	52	Sedgwick	Revere School District	K-12 Gym Roof Replacement	10:00:00 AM
2 Roof		35	53	Weld	University Schools	ES and HS Roof Replacement	10:12:00 AM
Break							10:24:00 AM
4 Supplemental		17	54	Morgan	Fort Morgan Re-3	Supplemental FY24 DW Health and Safety Upgrades	10:39:00 AM
4 Supplemental		5	55	Logan	Plateau RE-5	Supplemental FY23 PK-12 Addition/Renovation	10:54:00 AM
4 Supplemental		55	56	Morgan	Weldon Valley RE-20(J)	Supplemental FY24 PK-12 Addition/Renovation	11:09:00 AM



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: March 21, 2024

SUBJECT: Legislative Discussion

ITEM TYPE: Discussion Item

BACKGROUND:

This will be a placeholder for discussions about potential legislation that could affect the Building Excellent Schools Today Grant Program, the Capital Construction Assistance Board, or CDE's Capital Construction Unit.

Discussion Items:

[HB24-1008](#) Wage Claims Construction Industry Contractors

From the Associated General Contractors of America:

“This bill states that if any company on a construction project, even several tiers down the chain, does not pay wages properly (wages can be pay or benefits or submission of tax withholdings, etc.), then the prime contractor must pay the wages. It is true that state & local entities are exempt from the state wage act, but the contractors working for a state or local entities are not exempt from HB24-1008. This is where the potential increased cost to public entities comes in. To protect themselves from a wage theft claim, the prime contractor will very likely require a payment & performance bond from all tiers of specialty and/or subcontractors on the project. The additional bond costs will range from 3-5% of a project cost. Being conservative, we estimate you project costs will increase by 3% if this bill is passed. Please visit with your local senators and representatives if this is a concern for you. Since the bill was recently amended in the House Business Affairs & Labor Committee, it is our understanding that you have a second chance to submit an updated fiscal not on the bill.”

[SB 24-159](#) Mod to Energy & Carbon Management Practices

The State Land Board (SLB) explains that industry experts suggest drilling in Colorado will stop immediately if the bill passes, therefore the SLB anticipates its revenues could drop well below the \$40M minimum required by statute.

State Land Trust Funds to the Capital Construction Assistance Fund

- The greater of fifty percent of the gross amount of public school lands income, other than interest or income earned on the deposit and investment of moneys in the public school fund received during the fiscal year, or forty million dollars.
- Public school lands income comes from:
 - (a) The sale of timber on public school lands, rental payments for the use and occupation of public school lands, and rental or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals from public school lands;
 - (b) Royalties and other payments for the extraction of any natural resources on public school lands; and
 - (c) Interest or income earned on the deposit and investment of moneys in the public school fund.

STAFF RECOMMENDATION:

N/A

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

N/A



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: March 21, 2024

SUBJECT: Review of Priorities from August Retreat

ITEM TYPE: Discussion Item

BACKGROUND:

At the August board retreat, staff and board reviewed several topics from the previous grant round’s applicant survey. Staff have reviewed notes and prioritized next steps. The highest prioritized topics are outlined below with our target timelines to address and bring back to the board for review and further discussion.

Topic	Timeline	Responsible Team
GAINS Transition	Ongoing	Staff and Board
Grant Round Modifications	March 2024	Staff and Board
Review Scoring Criteria	August 2024 (<i>implement FY26 grant cycle</i>)	Staff and Board
Program Policies/Guidelines <ul style="list-style-type: none"> • Master Planning • Grantee Training • Competitive Procurement • COP Match Returns • Recapture and Lease Purchase Agreements 	Ongoing <ul style="list-style-type: none"> • n/a • June/July, tentative • Complete • March, tentative • March, tentative 	Staff and Board

Updates:

COP Match Returns: Working with Treasurer’s Office. Staff, messaging is as follows:

- Previously the CCAB had a policy to award separate cash grants to grantees at the end of a COP project, to “reimburse” for the equivalent of the grantee’s match portion of project savings held at Zions that cannot be accessed. However, it was determined to not be allowable in statute. We have been working with the Treasurer’s Office on a possible pathway for allowing grantee access to a share of project savings from COP projects. We have not finalized anything yet but are hoping to review again soon with the Treasurer’s Office given that COP funded projects continue to close. If you would like to speak with someone at the Treasurer’s Office, please contact:

Jim Eke
CST Debt Manager/CLIMBER Director
Colorado Department of the Treasury
Cell: 303.866.3948
Treasury.colorado.gov

- As of January 2024, there were 21 BEST projects financed with COPs with associated project savings.
 - 14 projects closed out, with \$6.8M in grantee portion of savings.
 - 8 projects still open, with \$28M in grantee savings. These projects continue to expend funds.

STAFF RECOMMENDATION:

N/A

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

N/A



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: March 21, 2024

SUBJECT: Recapture Clause and Lease Purchase Agreements

ITEM TYPE: Action Item

BACKGROUND:

Since the August 2023 CCAB board retreat, staff have worked with Attorney General's Office to revise components of the BEST grant program to further protect the programs investments and make sure those investments continue to support public educational uses. Revisions to guidance provided to charter schools related to eligibility have been discussed with the League of Charter Schools. Recommended revisions are as follows:

1. Consideration of revisions to recapture language in Section B.2. of the BEST Grant Award Letter

"The Grantee acknowledges that if the Grant is a BEST Emergency Grant or a BEST Cash Grant and the property or improvements impacted by the Grant is sold, abandoned, demolished, or extensively renovated in a manner that makes the Project work obsolete within a ~~five-year~~ **ten-year** period after completion of the Project, the Grant will be recaptured as follows: if the property is sold, abandoned, demolished or extensively renovated in a manner that makes the Project work obsolete within the first year after completion, 100% of the Grant shall be returned to the State of Colorado, with a ~~20%~~ **10%** reduction per year thereafter."

*These revisions will impact all BEST grants in the FY25 grant round and forward, as well as the guidance provided related to the requirement to have the right to own a facility through a lease-purchase agreement (referenced below) which most directly impacts charter applicants.

2. Guidance provided on the BEST/CSCC website related to charter school eligibility will be revised.

"The applicant must qualify under § 22-43.7-109(1)(a), C.R.S., requiring the applicant to own the public school facility, have the right to own through the financed purchase of the facility such as a lease-purchase agreement with the owner, or have a qualifying sub-lease purchase agreement with the State.

To determine that your school meets these requirements, applicants must either provide proof of ownership or Articles of Incorporation and Bylaws for both the charter school and building corporation as well as any leasefinanced-purchase agreement. These documents will be reviewed by the Attorney General's office. Additional guidance provided HERE."

*Guidance document revisions are included in the board packet.

Note: "Issue 1" on the attached document is old business that has been in place and on the website for a number of years. "Issue 2" is the new material.

To properly protect the state's and applicants' interests in investing in publicly owned school facilities the following considerations will be put into effect:

- Agreements must be roughly consistent with the state's lease-sublease agreements related to COP financing with a right to own the asset.
- Agreements must include an option price functionally equivalent to zero at the end of the loan term.
- The recapture period for a financed purchase of an asset will extend the grant agreement's recapture period to match the length of the agreement.

STAFF RECOMMENDATION:

Review revision to Section B.2. of the BEST Grant Award Letter and material under "Issue 2" of the attached guidance document.

STAFF RECOMMENDED MOTION:

I move to recommend that the Colorado Department of Education revise the BEST Grant Award Letter and Charter School Building Ownership Guidance to reflect the changes on the March 2, 2024 agenda sheet.

DOCUMENTATION:

Charter ownership guidance document.

Charter School Building Ownership Guidance

BACKGROUND: The Capital Construction Assistance Board may only provide financial assistance to an applicant that owns or will have the right to own the public school facility. § 22-43.7-109(1)(a), C.R.S.

ISSUE 1: Whether a charter school that formed a separate third-party building corporation to hold title to a public school facility can meet the eligibility requirement of 22-43.7-109(1)(a), C.R.S.?

SHORT ANSWER: Generally, the charter school owns the facility when each of the four factors below are squarely met:

Factor 1: The building corporation was formed for the sole purpose of holding title to the property and holds title to the property;

Factor 2: The charter school directly controls or will upon payment of the secured debt control, at least a majority of appointments to the governing board of the building corporation;

Factor 3: The corporate purposes of the building corporation are restricted so that the building corporation cannot interfere with the charter school's full use and enjoyment of the facility; and

Factor 4: Upon dissolution of the building corporation, its assets revert to the charter school or its authorizer.

LEGAL ANALYSIS:

The Capital Construction Assistance Board “may only provide financial assistance” for a facilities “that the applicant owns or will have the right to own in the future under the terms of a financed purchase of an asset or certificate of participation agreement[.]” § 22-43.7-109(1)(a), C.R.S. The BEST Act provides several explicit rules for providing financial assistance to charter school applicants, *see id.* at (3) & (9)(c), but does not address the question of ownership in the event the applicant uses a third-party building corporation to hold title to the public school facility.

The policy is to treat public school facilities owned by charter school building corporations as owned by the charter school applicant, when doing so is consistent with related statutes endorsing such an approach and sufficient indicia of ownership are present. *E.g.*, § 22-30.5-403(3), C.R.S. (“‘Charter school’ means a charter school as described in section 22-30.5-104, and also includes a nonprofit corporation exempt from taxation under section 501(c)(3) of the federal ‘Internal Revenue Code of 1986’, as amended, that owns a facility used for occupancy by pupils enrolled or to be enrolled in a charter school on behalf of a charter school and that was created for the sole purpose of holding title to such facility.”).

To ensure that the building corporation was created for the sole purpose of holding title to the public school facility, the Capital Construction Assistance Division reviews the articles of incorporation and by-laws of the building corporation and (when necessary) the articles and by-laws of the school and the current or proposed lease agreement between the two entities. *Cf. Hinsdale Cty. Bd. of Equalization v. HDH P'ship*, 438 P.3d 742, 749 (Colo. 2019) (recognizing that “significant incidents of ownership” may be more controlling than “formal legal title” in determining legal ownership); *Black's Law Dictionary* (11th ed. 2019) (defining an “owner” as one “who has the right to possess, use, and convey something; a person in whom one or more interests are vested.”). The Division’s review is holistic, paying particular attention to the four factors articulated above.

ISSUE 2: Whether a charter school that leases a public school facility pursuant to a lease-purchase agreement can meet the eligibility requirement of 22-43.7-109(1)(a), C.R.S.?

SHORT ANSWER: Generally, the BEST Board will treat a lease-purchase agreement as a “financed purchase of an asset” only if the purchase option can be exercised at any point throughout the term of the lease (even in events of nonappropriation or default) and is, at the end of the lease’s term, set at a nominal option price.

LEGAL ANALYSIS:

As originally enacted, the BEST Act referred to lease-purchase agreements:

- (a) The board may only provide financial assistance for a capital construction project for a public school facility that the applicant owns or will have the right to own in the future under the terms of a lease-purchase agreement with the owner of the facility or a sublease-purchase agreement with the state entered into pursuant to section 22-43.7-110(2).

§ 22-43.7-109(1)(a), C.R.S. (2008). In 2021, the language was amended to replace “lease-purchase agreement” with “financed purchase of an asset,” and to replace “sublease-purchase agreement” with “sub-financed purchase of an asset.” 2021 Colo. Sess. Laws, ch. 325 (HB21-1316), § 17. This legislation was recommended by the Statutory Revision Committee to conform the state’s accounting practices to new requirements in GASB Statement No. 87:

Statement number 87 by GASB, which affects state and local government fiscal years after June 15, 2021, requires that a contract that transfers ownership of an asset be accounted for and reported as a financed purchase or sale of an asset, regardless of whether the contract is labeled by the parties as a lease.

See HB21-1316, Bill Summary (as introduced). Given the largely technical and non-substantive intent, the BEST Board understands legislative policy to be to continue allowing lease-purchase agreements as an eligible form of financed purchase agreement.

Consistent with the BEST Act’s overall purpose and with the plain meaning of the words “financed purchase of an asset,” however, the BEST Board construes the statute to include only

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lease-purchase agreements that are roughly consistent with the state's lease-sublease agreements under § 22-43.7-110(2), C.R.S. These agreements are structured so that the applicant has an option to purchase the building from the creditor by paying the remaining principal and interest due on the debt secured by the building—including an option price functionally equivalent to zero at the end of the loan term, because at that point the secured debt has been fully paid off. Further, this option can be executed at any point, including upon events of non-appropriation or default. These terms reflect periodic payments toward an agreed-upon price, concluding with a right to *own* the asset (not merely a right to purchase), and therefore reflect the ordinary meaning of a “financed purchase.” They also properly protect the state's and applicants' interests in investing in publicly owned school facilities.

The foregoing interpretation speaks to the applicant's eligibility under § 22-43.7-109(1)(a), C.R.S. As a matter of policy, the BEST Board reserves the right to adjust its standard grant terms for a successful applicant to further protect the state's interests, including but not limited to extending the grant agreement's recapture period to match the length of the lease-purchase agreement.