

CDE MEETING AGENDA



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, February 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
- II. Roll Call
- III. Approve Agenda
- IV. Approve Previous Meeting Minutes from: January 18, 2023
- V. Board Report
- VI. Staff Report
- VII. Discussion Items:
 - A. August Retreat Priorities / Policy Review
 - B. May Meeting Prep
 - C. Legislation Discussion
 - D. FY25 Initial List of BEST Applicants
- VIII. Future Meetings:
 - March 21, 2024 – Virtual
 - April 18, 2024 – Virtual
 - May 13-15, 2024 – Virtual
- IX. Public Comment
- X. Adjournment

CDE MEETING MINUTES



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 (CCAB) Meeting Minutes

Date & Time: Thursday, January 18, 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 1:02pm
- II. **Roll Call:**
Members Present: Kevin Haas, Vaishali McCarthy, Matt Samelson, Wade Turner, Lara Vincent, Michael Wailes, Jane Crisler
Absent: George Welsh, Wendy Wyman
- III. **Approve Agenda:**
Motion moved: Matt Samelson - *Approve agenda as presented.*
Second by: Michael Wailes
All for: Kevin Haas, Vaishali McCarthy, Matt Samelson, Wade Turner, Lara Vincent, Michael Wailes, Jane Crisler
Absent: George Welsh, Wendy Wyman
All opposed: None
Motion passed
- IV. **Approve Minutes: November 16, 2023**
Motion moved: Kevin Haas - *Approve Minutes as written.*
Second by: Michael Wailes
All for: Kevin Haas, Vaishali McCarthy, Matt Samelson, Wade Turner, Lara Vincent, Michael Wailes, Jane Crisler
Absent: George Welsh, Wendy Wyman
All opposed: None
Motion passed
- V. **Board Report:**
 - Board members intros
 - Welcome to Wade Turner our newest board member.

VI. **Staff Report:**

- Staff intros
- Andy, Katie and George attended the ribbon cutting ceremony for the Fowler R-4J school districts new Jr./Sr. High School.
- Andy shared some progress photos of some current BEST projects.
- Walsenburg ribbon cutting ceremony was canceled due to weather and will be held in February.

VII. **Discussion Items:**

- A. August Retreat Priorities/Policy Review
 - The GAINS transition, competitive procurement language, COP match returns and recapture lease purchase agreements were all discussed.
- B. Legislative Discussion
 - Matt and Andy gave an overview of the meeting held with CDEs Legislative Advisor
- C. Final FY24 BEST Awards List and Backup Project Award Process
 - Andy reviewed the backup award process and gave an update on the FY23-24 awarded projects.

VIII. **Future Meetings:**

- February 15, 2024 - Virtual
- March 21, 2024 – Virtual
- April 18, 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: February 15, 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:

Recapture and Lease Purchase Agreements: Working with Attorney General’s Office to revise two main components.

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 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 lease-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 that we’re circulating for discussion?

STAFF RECOMMENDATION:

Discuss consideration of revision to Section B.2. of the BEST Grant Award Letter for possible action item at the March 2024 meeting of the Capital Construction Assistance Board. Discuss material under “Issue 2” of the attached guidance document.

STAFF RECOMMENDED MOTION:

N/A

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 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

DISCUSSION DRAFT

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.



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: February 15, 2024

SUBJECT: May Meeting Prep

ITEM TYPE: Discussion Item

BACKGROUND:

Currently in Grant Review Phase. Working with GAINS administration team on considerations for:

- Can we create a “summary book” or what will this look like for the CCAB?
- What will the review and scoring system look like for the CCAB before the May meeting?
- How will the CCAB revise scores and finalize during the May meeting?
- How will staff reconcile the CCAB scoring data at the end of the May meeting?
- Tentative dates:
 - February 15: Share the list of grants with an overview of the process.
 - March 21: More detail and visual sample of the application, scoring rubric test site to demonstrate.
 - April 18: Train CCAB on fully functioning scoring system. Create log ins, walk through process. Distribute “summary books”.
 - May 13 – 15: Fingers crossed!

STAFF RECOMMENDATION:

N/A

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

N/A



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: February 15, 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:

- Any updates from the Board.

STAFF RECOMMENDATION:

N/A

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

N/A



Public School Capital Construction Assistance Board
Meeting Agenda Sheet

MEETING DATE: February 15, 2024

SUBJECT: FY25 Initial List of Applicants

ITEM TYPE: Discussion Item

BACKGROUND:

The FY25 BEST grant round closed on February 5, 2024. All numbers below are subject to change as staff works with applicants to clarify and revise applications.

- 57 grants 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).

STAFF RECOMMENDATION:

Review and discuss.

STAFF RECOMMENDED MOTION:

N/A

DOCUMENTATION:

List to be provided at meeting.