

[2009 Fall Conference]

Coalition for Adequate School Housing
(C.A.S.H.)

October 13, 2009

Westin South Coast Plaza
Costa Mesa, CA

[Legislative/Regulatory Update]

October 13, 2009

11:20 a.m.

Costa Mesa, CA

Presenters

- Kathy Tanner, San Marcos USD
- Tom Duffy, Legislative Director,
Coalition for Adequate School Housing

Stormwater Critical Issues

- Kathy Tanner, San Marcos USD

State of the State

- Tom Duffy, Legislative Director,
Coalition for Adequate School Housing

Legislation

- **AB 333 (Fuentes): Extension of Tentative Tract Maps**
- **AB 21 Fourth Extraordinary Session (Evans): DBVE Requirements for Public Works**
- **SB 802 (Leno): Retention Proceeds**

Regulatory

- **6%, “AB 127 Adjustments” to the New Construction Grants**
- **Seismic Mitigation Program**
- **Career Technical Education – Proposed Regulations**
- **Facility Hardship Requests**

Regulatory - Continued

- **Financial Hardship Regulations**
- **DSA Close-Out**
- **Special Education Classroom Issues with CDE & DSA**



2009 FALL CONFERENCE LEGISLATIVE AND REGULATORY UPDATE

State Bond Sales and School Construction Projects

State Treasurer Bill Lockyer sold \$6.5 billion in tax-exempt bonds in late March 2009 and an additional \$6.85 billion in taxable bonds, which included federal Build America Bonds (BABs), in April 2009. The March and April bond sales provided approximately \$2 billion for projects apportioned by the SAB under the School Facility Program on or before December 17, 2008; however, according to the OPSC status of fund releases there is still a cash deficit of approximately \$460 million in SFP apportionments that need to be liquidated.

Of the approximate \$2 billion in cash available for SFP projects, over \$230 million remained as of the September 23 SAB meeting to be allocated to districts with project apportionments. Idle cash in the SFP coffers has the potential of intimating that school construction needs are fully met. We know this is not true both from the remaining unfunded apportionments as well as the growing list of Unfunded Approvals made by the SAB each month. In fact, since March 2009, the SAB has approved over \$1.7 billion in Unfunded Approvals.

School Facility Program Needs

	Expenditures	Revenue <i>March & April Bond Sales</i>	Balance
Apportionments <i>as of 12/17/08</i>	\$2.4 billion		
Unfunded Approvals <i>as of 09/23/09</i>	\$1.7 billion		
TOTAL	\$4.1	\$2.0	(\$2.1)

The State Treasurer reportedly is planning a state bond sale in mid-October. The SAB is hopeful that the state will allocate at least \$460 million to the SFP to alleviate the current backlog of apportionments. We will keep C.A.S.H. members abreast of the latest developments through the C.A.S.H. website at www.cashnet.org.

Legislative Update

The fiscal crisis enveloping California had a direct impact on the number and types of bills that survived the legislative process this year. Perennially, all bills with a State general fund price tag undergo review by the Legislature; however, the fiscal scrutiny was particularly heavy this year as the Legislature and the Administration continued to grapple with a structural deficit and annual budget. The survivability of a bill was measured by simple math: if the bill cost more than a dollar of general fund money – even secondarily as debt service on issued bonds – it was dead on arrival for all intents and purposes. The result is that very few education facility bills made it to the Governor's desk, and those that did were high priority for the Legislature and or Administration, or had no money tied to them.

At the beginning of 2009, C.A.S.H. set out sponsoring four bills that were identified as priority issues for the organization. The nature of C.A.S.H.'s core mission – to ensure sufficient funding for school construction and renovation – make C.A.S.H. priorities difficult to pursue during tough economic times. However, the pursuit of the mission is often just as important as the mission itself. Through the sponsorship of priority bills and vigorously opposing bills that threaten key C.A.S.H. objectives, C.A.S.H. raises issues to the attention of key decision- and policy-makers. Furthermore, many of our flagship issues, such as grant adequacy, are multi-year priorities that take tremendous effort.

The Governor has until October 11 to take action on any bill passed by the Legislature. At the time of this printing, Governor Schwarzenegger had yet to act on many of the facility bills on his desk. If the Governor takes no action on a bill (neither signs nor vetoes it), the bill automatically becomes law.

AB 211 (Mendoza) SUPPORT	School Locks Held
AB 216 (Beall) OPPOSE	Public Contracts: Claims Held
AB 220 (Brownley) SUPPORT	Statewide School Bond Two-Year Bill
AB 346 (Torlakson) SPONSOR	Joint-Use Program Held
AB 396 (Fuentes) OPPOSE	Public Works: Payments & Retentions Held
AB 629 (Krekorian) WATCH	School Plumbing Systems: Lead Testing Held
AB 660 (Torrico) OPPOSE	Fire Sprinkler Systems Installation Held
AB 815 (Ma) OPPOSE	Implied Warranty, Plans and Specifications Two-Year Bill
AB 821 (Brownley) WATCH	Green Cleaning Products Held
AB 1099 (Fuller) SPONSOR	DSA Project Close Outs Held
AB 1120 (Niello) WATCH	Constructability Reviews Awaiting Governor Action
AB 1127 (Solorio) OPPOSE	Modernization Projects, Automatic Sprinkler Systems Held

SB 252 (Denham) SUPPORT with Amendment	Deferred Maintenance, Education Technology Held
SB 334 (Ducheny) SUPPORT	Special Education Grant Increases Awaiting Governor Action
SB 363 (Hancock) SPONSOR	Solar Schools Loan Program Held
SB 375 (Hancock) SPONSOR	Seismic Mitigation Program Held
SB 592 (Romero) SUPPORT	SFP Charter School Facilities Program, Property Title Awaiting Governor Action
SB 694 (Correa) OPPOSE	Non-Bid Public Work Two-Year Bill
SB 802 (Leno) NEUTRAL	Retention Proceeds Awaiting Governor Action

Governor Signs Two Key Bills Affecting School Construction

AB 333 (Fuentes): Extension of Tentative Tract Maps

Governor Schwarzenegger signed AB 333 (Fuentes) into law, requiring a 24-month extension on tentative or vesting tentative tract maps that were still valid and approved as of July 15, 2009, and are set to expire before January 1, 2012. The bill took effect immediately upon his signature and therefore can be used for districts submitting or updating their New Construction eligibility this year.

The instructions on the SAB Form 50-01: Enrollment Certification/Projection request that if an approval on a map was given an extension the district must provide meeting minutes of when the extension request was granted. C.A.S.H. believes that for purposes of valid and approved tentative maps with expiration dates between July 15, 2009 and January 1, 2012 no further substantiation of validity or approval beyond what is required for eligibility determination is needed because AB 333 (Fuentes) requires all such maps to be extended by an additional 24 months without exception.

School districts are encouraged to dialogue early with the Office of Public School Construction (OPSC) and their local planning departments if their eligibility includes dwelling unit augmentations.

AB 21 Fourth Extraordinary Session (Evans): DBVE Requirements for Public Works

Provided By: Kris Meyer, Ledesma & Meyer Construction Company and ACCM President

School districts are governed by Education Code Section 17076.11 which provides that any school district that utilizes School Facility Program (SFP) funds shall have an annual participation goal of at least three percent for Disabled Veteran Business Enterprises (DVBE). On July 28, 2009, the Governor signed Assembly Bill 21 of

the Fourth Extraordinary Session (Evans) which amended Public Contract Code Section 10115.2 to eliminate the good faith effort method of compliance for state contracts. Shortly after the Legislature amended the Public Contract Code, the Department of General Services (DGS) indicated that its Title 2 regulation would also be amended. While there does not seem to be any confusion about the Education Code provision remaining intact, some have raised questions about the status of the good faith effort for school district compliance. The Association of California Construction Managers (ACCM) members have been working with attorneys that address these issues to shed some light on what the law is now for school districts.

To understand what is required today, a little history is useful. On January 1, 2000, the three percent goal was added to school district SFP projects. Initially, the Office of Public School Construction (OPSC) advised districts that the determination of how to satisfy the new statute should be made by each district in consultation with their attorney. After that, a certification that the statute had been complied with was added to the 50-04. By April 26, 2006, OPSC Audit Advice was given to districts to maintain bidding documents to demonstrate a district's DVBE requirements. In June 2007, OPSC published a State Allocation Board (SAB) DVBE Handbook that refers to compliance by a good faith effort but also states that the information is not applicable to the SFP. In July 2007, OPSC published the School Facilities Program Handbook that lists DGS as an agency to consult concerning DVBE contractors, but states that the DVBE Program administered by DGS does not itself apply to school district contracts.

Most recently, some districts who are fortunate enough to be bidding projects, have received protests from DVBE contractors that were not selected.

In deciding how to proceed, district staff need to know three things:

First, the Legislature has not touched the Education Code provision that the School Facility Program operates under;

Second, you should ask your attorney how to proceed to best protect your projects;

Third, the SFP DVBE requirement was never very clear.

The Association of California Construction Managers (ACCM) was formed in the early 1990's and its mission is to promote and preserve the ability of our members to practice construction management in the K-12 public school system in California. For more information on ACCM, please visit their website at www.ACCM.com.

Regulatory Issues

6%, "AB 127 Adjustments" to the New Construction Grants

The 2006 school bond bill, AB 127 (Nuñez), authorized the SAB, effective January 1, 2008, to adjust the New Construction base grants by up to six percent to reflect the *actual costs* of school construction. The Board's Implementation Committee discussed potential methodologies of using the data collected on the Project Information Worksheets (PIW) to assist the Board in determining the appropriate grant adjustments for 2009.

C.A.S.H. and others have consistently raised concerns over the accuracy and utility of the data generated by the PIW and over the efficacy of any potential methodology to aggregate and analyze the data to determine appropriate grant adjustments. Some of the concerns raised include the inclusion and exclusion of certain data that may skew the results, such as projects that include Use of Grants, Financial Hardship projects, and accounting for Site Development costs; and the use of incomplete estimated costs prior to project completion. We understand that the OPSC is preparing an analysis of the PIW data that may be shared at the November 4, 2009 SAB meeting. C.A.S.H. conducted its own study of PIW data, using the methodology used in prior grant

adequacy studies – the *LPP to SFP Conversion Analysis* and *Re-Use of Plans* Studies – that demonstrate a funding deficiency at all grade levels of well over six percent.

Seismic Mitigation Program

The SAB at its August 26, 2009 meeting approved amended regulations to improve access to the Seismic Mitigation Program. The proposed regulations include reducing the ground shaking intensity (GSI) factor from 1.7g to 1.68g and expanding the types of building construction eligible under the program. The Board further approved a motion that directs the Division of the State Architect (DSA) to develop alternative eligibility criteria for a school building not otherwise eligible under the existing program but has been evaluated and determined to be imminently threatened by collapse during a seismic event. DSA would then make a recommendation to the Board to further amend the Seismic Mitigation Program.

Career Technical Education – Proposed Regulations

The SAB's Implementation Committee has been discussing regulatory changes for the Career Technical Education Program that include proposals to:

- Expand the deadline to obtain CDE and DSA approval from 12 months to 15 months after apportionment;
- Reduce Reservation of Funds Apportionments *prior to* Fund Release; and
- Require districts to return CTE savings, which includes any interest earned, at the time the district submits a final Expenditure Report

At the time of this printing, the Implementation Committee was scheduled to continue the discussion on this item.

Facility Hardship Requests

The SAB's Implementation Committee has been discussing issues relating to Facility Hardship Requests. The OPSC presented an alternative to filing an Appeal Request (SAB Form 189) because Facility Hardship requests are *not* appeals. The alternative is a distinct Facility Hardship Checklist that enables a district to provide detail and documentation to support the request. The OPSC believes that the checklist is not subject to the formal rulemaking process like other SFP regulations. Implementation Committee members and stakeholders raised concerns over some of the information requested on the checklist, fearing that school districts that cannot provide all of the information will believe they are not eligible for Facility Hardship. Furthermore, there was a concern that the OPSC would require the checklist for Facility Hardship Projects. At the time of this printing, the write-up to the Implementation Committee from OPSC stated that OPSC would strongly encourage districts to use the checklist, but there is no plan to make the document required by regulation.