

# Legislative Update

C.A.S.H. Spring Conference

May 22, 2009

San Diego, CA

## **Moderator**

Susan Ryan, NTD Architecture

## **Presenters:**

Tom Rizzuti, Anaheim City SD

Phil Henderson, Orbach, Huff & Suarez

Tom Duffy, Murdoch, Walrath & Holmes

Mavonne Garrity, Office of Senator Lowenthal



## C.A.S.H.-Sponsored Bills



Tom Rizzuti, Anaheim City SD

- AB 346 (Torlakson): Joint Use
- SB 375 (Hancock): Seismic Mitigation
- AB 1099 (Fuller): DSA Close Out
- SB 363 (Hancock): Solar Schools



## C.A.S.H.-Sponsored Bills



### AB 346 (Torlakson): Joint Use

#### Program Improvements

- Eligible Projects
- Eligible Contributions
- Grant Adjustments



## C.A.S.H.-Sponsored Bills



### AB 346 (Torlakson): Joint Use

#### Eligible Projects

#### Types of Facilities

- Career Technical Education Facilities
- Outdoor Recreational Site Development
- Science Laboratories
- Parking Facilities
- Child Wellness Clinics
- Performing Arts Centers
- Cultural Education Centers

Projects on land *adjacent* to a school site



## C.A.S.H.-Sponsored Bills



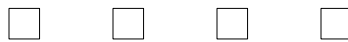
### AB 346 (Torlakson): Joint Use **Eligible Contributions**

May include as part of the local contribution, the:

- Value of land
- Donated equipment that is part of a Joint Use CTE Application, up to 10% of the project costs



## C.A.S.H.-Sponsored Bills



### AB 346 (Torlakson): Joint Use **Grant Adjustments**

Provides a one-time 25% grant increase to the grants:

- \$1,250,000 – Elementary Schools
- \$1,875,000 – Middle Schools
- \$2,500,000 – High Schools

Requires the grants to be adjusted *annually* per the Class B Construction Cost Index



## C.A.S.H.-Sponsored Bills



### SB 375 (Hancock): Seismic SFP Seismic Mitigation Program

- Eligible Projects
- Eligible Funding
- Unfunded List



## C.A.S.H.-Sponsored Bills



### SB 375 (Hancock): Seismic

#### **Eligible Projects**

- Would have required the SAB to review and amend the Seismic Mitigation Program eligibility criteria
  - 1.7g – Spectral Acceleration Rate
  - Building Construction Types
- State Allocation Board's Recent Actions



## C.A.S.H.-Sponsored Bills



SB 375 (Hancock): Seismic

### **Eligible Funding**

Requires the Program to Fund

- Interim Student Housing
- Structural Evaluation Reports for Eligible Projects



## C.A.S.H.-Sponsored Bills



AB 1099 (Fuller): Close Out

### **Statutory Relief to Streamline DSA Project Certification**

- Repeals statutes that require:
  - Filing of Notices of Completion
  - Filing of Verified Reports (Form 6) by Contractors
- Applies to K-12 and Community Colleges



## C.A.S.H.-Sponsored Bills



### SB 363 (Hancock): Solar Schools

- Creates sub-account in the State Energy Conservation Assistance Account
- Set aside funds to provide low-interest loans to school districts to install solar energy systems



## Public Contract Code



### Phil Henderson, Orbach, Huff & Suarez LLP

- AB 396 (Fuentes)
- SB 802 (Leno)
- AB 815 (Ma)
- AB 216 (Beall)
- Lease Leaseback: UCCAA, SB 694 (Correa)



## Public Contract Code



### AB 396 (Fuentes)

The bill:

- Limits school districts ability to withhold funds to cover costs of litigation for filed stop notices only if a contractor rejects a tender of the District's defense
- Limits contract retentions to a yet-to-be determined percentage (formerly 5%)
- Expresses legislative intent to enact future legislation regarding prompt payment statutes



## Public Contract Code



### AB 396 (Fuentes)

Practical Impacts of AB 396:

- Reduces school district's leverage to ensure contractor performance (10% retention down to no more than 5% retention).
- Removes Districts' discretion on how to handle stop notice actions if it requires tendering defense before the District can withhold funds.



## Public Contract Code



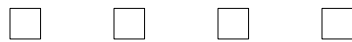
### SB 802 (Leno)

The bill (Similar to AB 396):

- Limits contract retentions to 5% of contract value.



## Public Contract Code



### SB 802 (Leno)

Practical Impacts of SB 802:

- Reduces school district's leverage to ensure contractor performance (10% retention down to no more than 5% retention)



## Public Contract Code



### AB 815 (Ma) and AB 216 (Beall)

AB 815 (Ma): Awaiting a Pending California Supreme Court Decision, the bill:

- States legislative intent to address issues raised in *LAUSD v. Great American Ins. Co.*  
“[Contractor] may maintain a cross-action for breach of contract based on nondisclosure of material information if it can establish that the District knew material facts concerning the project that would affect [Contractor]’s bid or performance and failed to disclose those facts to [Contractor].”

AB 216 (Beall): Dovetails with AB 815 relative to disputes and claims filed by contractors.



## Public Contract Code



### AB 815 (Ma) and AB 216 (Beall)

Practical Impacts of AB 815 and AB 216 (Beall):

- Districts could be bound to disclose all “known” issues in drawings or risk a claim from a contractor, regardless of the contractor’s knowledge or other factors.



## Public Contract Code



## Lease Lease-Back

SB 694 (Correa): Non-Bid Public Work

- Two-Year Bill which may attempt to place further restrictions on LLB contracting.

UPCCAA:

- Uniform Construction Cost Accounting Commission may consider prohibiting LLB for participating agencies.



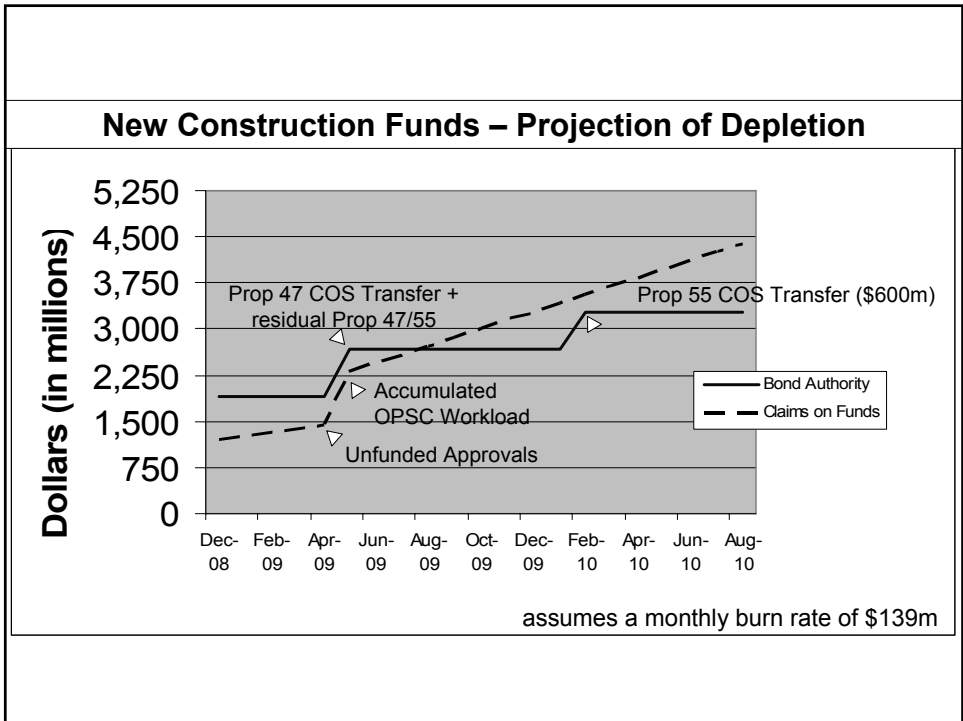
## California's Political Economy



### *C.A.S.H. Priorities & Objectives*

Tom Duffy, C.A.S.H. Legislative Director, Murdoch, Walrath & Holmes

<b>REMAINING BOND AUTHORITY FOR NEW CONSTRUCTION AND MODERNIZATION</b>			
<b>Funds Available</b> As of April 22, 2009		<u>New Construction</u>	<u>Modernization</u>
Proposition 1D		698.8	2062.7
Proposition 47		50.4	5.2
Proposition 55		28.2	0.5
Subtotal		777.4	2,068.4
Proposition 47 COS		700.0	0.0
LAUSD Set Aside		40.0	0.0
<b>Total</b>		<b>1,517.4</b>	<b>2,068.4</b>
<b>Claims on Funds</b> As of April 22, 2009			
Unfunded Approvals		252.1	63.6
OPSC Workload		856.6	322.1
<b>Total</b>		<b>1,108.7</b>	<b>385.7</b>
<b>Estimated Total Funds Available</b>		<b>408.7</b>	<b>1,682.7</b>



## SFP Projects to be Funded by Recent Bond Sales

Unfunded Apportioned Projects As of 12/17/08	2,380.0
March Bond Sale	541.0
<b>Subtotal of Unfunded Apportionments</b>	<b>1,839.0</b>
April Bond	1,439.0
<b>Total Unfunded Apportionments</b>	<b>400.0</b>