

Stuart & Associates

Governmental Consultants

TO: Dr. Joe Ovick

FROM: Susan Stuart

DATE: September 21, 2005

RE: September 9, 2005 – SAB Implementation Committee Meeting

Financial Hardship

This was the only issue addressed at the Implementation Committee this month. In response to an issue paper presented by OPSC, the SAB asked the Implementation Committee to evaluate the Financial Hardship program and make recommendations for any needed reform. The proposed regulations were to go before the SAB in September, but they have now been delayed for presentation until the October 26th SAB meeting.

Encumbrances

The main impetus for review of the FH program was based upon a staff observation that some districts are encumbering capital facilities funds within days of filing their financial hardship request, resulting in an alleged loss of revenues to the State. Over the past three months, the Implementation Committee discussed ways to reform the program to minimize or eliminate abuses. Although there have been some changes to the original recommendations, many provisions still exist, which are considered extreme by many districts. As districts have raised concerns with the issues, some of the recommendations have been altered, but in many cases interested parties have been told that there has been enough discussion on the item and the recommendation is going to remain unchanged.

One of the issues that has been revised is the change in the proposal to accept prior encumbrances from one year to six months. Under the current proposal, if OPSC decides an encumbrance made within six months is questionable, they would indicate in their financial hardship letter that the encumbrance was disallowed and that the district would have the opportunity to appeal to the SAB to dispute the decision. Although the financial hardship letter would require the district to contribute available funds, plus the disallowed encumbrance, staff indicated that

the district could continue to file applications while the appeal was being processed and take their chances. If the regulations are approved by the SAB, this provision would become effective for any requests filed after November 1, 2005.

Available Future Capital Facilities Funds

Last month there seemed to be agreement to change the regulations so that districts could use date of occupancy for closure of a project, and at this point would no longer be required to contribute local funds to the State. Staff agreed to use the date of occupancy because there can often be lengthy delays to the final close out of a project, due to no fault of the district, i.e. litigation.

OPSC staff now is recommending that a FH hardship district be required to contribute funds and make annual capital facilities fund reports until a 100 percent expenditure report has been accepted by OPSC for the project. Districts with multiple projects would submit reports of available local funds until the last FH application's 100 percent report is accepted by OPSC. Any funds available as a result of the OPSC review of these reports would be required as a contribution to any open FH application until the district meets the 50 percent match on all of its projects or the 100 percent report is accepted by OPSC, whichever comes first.

Acceptance of the report would require that all paperwork accompanying the SAB 50-06 be deemed present by the OPSC. If the original submittal was complete, then the delivery date would be used as the basis for the review of available local funds. Otherwise, the date will be the date the last required document is received by OPSC. In both cases the date will be noted in an OPSC letter.

Minimum Essential Facilities

OPSC is recommending that minimum essential facilities can only be a part of the FH project if it was included in the original DSA approved plans. Many members of the committee and audience suggested that districts be allowed to use a deductive alternative to exclude one or more support facilities from the construction contract, and be allowed to build these facilities when future funds become available. OPSC is recommending that districts appeal to the SAB on a case-by-case basis to have these minimum essential facilities funded locally without penalty to their future financial hardship funding. However, they reserve the right to express concern if they deem the facility to far exceed the minimum square footage.

It is important to note that this solution would not help those districts without capital facilities funding resources, such as small and low wealth districts.

Getting Out of Financial Hardship

Existing regulations require that a district is not deemed to be out of FH until it has not received an apportionment for three years as a financial hardship district. This would permit the district to use any local funding sources received after the last apportionment to be used locally without it being captured as part of the local match for the next FH project.

Under the proposed regulations, a district would be out of the FH program upon OPSC acceptance of the final SAB 50-06 for all of the financial hardship applications. With quick projects, this could be a very short period of time. Otherwise, districts would be required to file the final SAB 50-06 in three years after the fund release for an elementary school project or four years after the fund release for a middle school or high school project [see regulation 1859 (a)(1)(B)].

Life of Financial Hardship Approval

After input from the committee and audience at the July meeting, OPSC agreed to recommend that any financial hardship approval shall be good for a one year period instead of the current six months.

Modernization

The bulk of the language in the staff proposal only related to new construction projects. It was suggested that some of the language should also be added referring to modernization projects.

A majority of the committee and audience expressed dissatisfaction with the final result and stated they would be arguing their positions before the SAB when the proposed regulations are presented. When the most recent version of the regulations are available, we will forward them to you.