

# Stuart & Associates

## Governmental Consultants

TO: Dr. Joe Ovick

FROM: Susan Stuart

DATE: May 29, 2007

RE: May 23, 2007 State Allocation Board Meeting

---

### **Status of funds**

To date there remains \$3.3 billion in new construction funding, \$2.9 billion in modernization funding, and \$307 million for the Emergency Repair Program. If you would like more specifics on this item, please contact our office.

### **Executive Officer's Statement Lori Morgan's Report**

- ◆ Three regulations have been approved by the Office of Administrative Law (OAL). They include the Joint Use (April 30, 2007), Charter Schools (May 5, 2007) and Small High School (May 5, 2007) Regulations.
- ◆ Two regulations were withdrawn from the OAL. The High Performance School regulations were temporarily withdrawn because they included citations that were perceived as being outside the purview of the SAB. The New Construction Grant Increase regulations were withdrawn because they included a reference to a non-regulatory worksheet.
- ◆ The deadline for filing a joint use application is May 31, 2007.

### **Assistant Executive Officer Mavonne Garrity's Report**

- ◆ The review of the Seismic regulations has not yet begun.
- ◆ There has been a request to add a new position to the Implementation Committee representing the Construction Management industry. This item will be discussed at the next SAB Implementation meeting.

- ◆ The Little Hoover Commission began discussions related to whether the OPSC should report directly to the Department of General Services.

## Appeals

### **Val Verde Unified School District**

#### District's Proposal

The Val Verde Unified School District has been a Financial Hardship (FH) district since December of 1999. Statutes and regulations require that a school district, in return for receiving 100 percent funding from the State, will contribute any future capital facilities revenues received (GO bond funds, Certificates of Participation [COPs], developer fees, etc.) towards future facilities projects against the state contribution. Val Verde has received over \$340 million in FH funding for 26 projects since they have been in the program. A FH review conducted in 2006 revealed that \$25,476,433 in COP proceeds was available as a contribution to the State on future projects.

The District argued that the funds were not available because they expended these funds on costs related to the completion of previously approved financial hardship projects. They stated that without these expenditures, the schools would have been either incomplete or constructed of inferior quality, and stated that the increases in funding provided to financial hardship districts has not kept pace with the increased cost of construction.

The district made a thorough presentation describing the success of their academic program and outlining what kind of school could be built using state Financial Hardship funding. At the end of the three hour discussion, they presented an alternative proposal - if the SAB could not approve their request to "not apply" the COP funding to future projects, then the SAB would allow the district to use their COPs to complete their remaining three projects. The end result of this alternative proposal would be to apply what is left of the COPs toward the fourth project into the future.

#### SAB Comments

A long discussion ensued in which all members of the SAB raised issues. The following statements are indicative of some of the SAB member comments. Financial Hardship funding is not adequate to build complete schools (this comment generated applause from the audience). The requested action by the SAB would be illegal without change to law, as it is clear in code and regulation that any district revenues received by FH districts must be

contributed towards future projects. This would result in precedence for other FH districts. Other districts had been held to these standards, wouldn't it be difficult to treat this district differently? Questions were raised regarding the possibility of Material Inaccuracy charges on three areas, including a comment by staff that the district had not disclosed all of their COPs in their certification documents. Any questions of Material Inaccuracy charges would be brought up in an SAB meeting separate from the meeting in which the appeal was discussed. The alternative proposal suggested by the district would allow the district to continue doing what they were doing, allowing them to expend their COP funding until it was depleted. Concern was raised regarding issuing COPs as a means of funding schools, as it creates more debt.

The issue was held over until the June 2007 SAB. We expect a continued lively discussion of this appeal.

## **Regulatory Changes**

### **Labor Compliance**

The OPSC had a report that would have changed the grant allowance for implementing a Labor Compliance Plan. However, the item was held over until the next meeting.

## **Other Reports**

### **California Department of Education**

The California Department of Education handed out a draft report on the components of a complete school. The report included one exhibit that summarizes the Title 5 standards. The second exhibit was a laundry list of features that should be included in a complete school. The third exhibit provided examples of facilities approved by the CDE that were deemed to be complete schools. The CDE will make a presentation at the next SAB meeting.

According to the report, the State School Facilities Program is based on a square footage standard, which was initially adopted by the State Legislature in 1949, which formed the basis of the 1976 Lease Purchase Program. When the current per pupil student grants were determined, they were at the low end of a range recommended by the State Superintendent of Public Instruction at that time.

The report compares California's per pupil square footage per student allowance with the national median and shows California is significantly below

the national median. The national median for elementary schools 122 vs. California's 73; middle schools 144 vs. 80; and high schools 167 vs. 95.

Some of CDE's summary includes:

- One size does not fit all.
- A changing educational program has had to adapt to static facilities funding in California.
- CDE recommends that school facility projects be built to high performance standards and should be constructed of quality materials that will stand the test of time.

An advisory committee has been formed to discuss what features of a school are needed to support the world-class academic standards to which students, teachers, administrators, and elected officials are held accountable.

### **High Performance Schools Incentive Grant**

At the February 2007 meeting of the SAB, Global Green, USA made a proposal to provide additional financial incentives for implementing certain high performance enhancements to the SFP project. OPSC did not believe that additional financial incentives were warranted. Data will be monitored under the regular high performance schools grant to; (1) monitor the rate of participation, (2) evaluate whether the funding will cover the upfront costs and (3) determine if an adjustment to the grant is necessary.

### **Other Items of Interest**

#### **Access Compliance/Fire Safety**

Modernization projects that included ADA access compliance and fire/life safety work were provided a three percent augmentation of the per pupil allowance. Under the new regulations, districts have the option of accepting the three percent or a larger amount for this purpose. In both cases, the district is required to have DSA sign off on the minimum work required to address these issues. If the district requests more than the three percent amount, the increase in the apportionment cannot result in the modernization cost exceeding the 50 percent of replacement cost. This would trigger structural upgrades by the DSA. The ACU/Fire Code form is available on the OPSC website.

[http://www.documents.dgs.ca.gov/opsc/Forms/Checklists/Mod\\_ADA\\_Checklist.xls](http://www.documents.dgs.ca.gov/opsc/Forms/Checklists/Mod_ADA_Checklist.xls)

### **Clay Joint Elementary School District**

At this SAB meeting the Clay Joint Elementary School District was found to be subject to the Material Inaccuracy regulations because they submitted their fund release request on two projects prior to entering into the construction contract. One contract was signed four months early and the other was one month early, but both contracts were signed within the required 18 month timeline.

This one-school school district is required to repay approximately \$7,000 in interest penalty and is precluded from self-certifying for one year.