

**Chair Report-November 10, 2015 Sweetwater Union High School District Citizen's Bond Oversight Committee (CBOC) Agenda Items (Agenda 6 Project Labor Agreement and Agenda 11 Report from CBOC Chair-Role of Bond Oversight Committee)-Prepared by Nick Marinovich-nickmarinovich52@gmail.com**

**Introduction.** The purpose of this written Chair Report to the Bond Oversight Committee is three fold: 1) Provide a history of actions to date relative to the Project Labor Agreement Issue 2) Present the results of a Special Ad Hoc Subcommittee that discussed and provided recommendations regarding the Project Labor Agreement Issue 3) Outline a **Draft** informed opinion from the Chair on the Role of the Bond Oversight Committee relative to Project Labor Agreements.

With respect to Item Number 3 (Opinion on the Role of the Bond Oversight Committee), there will be further dialogue on this issue and it is hoped the CBOC is prepared to discuss this further at our January Meeting. In addition, there will be a meeting of the California League of Bond Oversight Committees (Calboc) that I will be attending on November 23, 2015 in Sacramento. The role of the CBOC will be discussed at this meeting and I can report back and seek the full CBOC collective wisdom on this matter. Our CBOC is all about open dialogue and listening.

**Summary and Conclusions.** There is a role of the Bond Oversight Committee in reviewing, commenting and reporting on Project Labor Agreements both before they are implemented and after completion of construction. Our primary function is to report to the public on all aspects of bond spending.

We do recognize the Board of Trustees, not the CBOC, maintains the policy role on deciding whether to pursue a PLA, prioritizations of projects, and entering into contracts for a bond program. However by reporting on policy and project decisions we may have some impact on Board of Trustees deliberations on this issue.

An Ad Hoc Subcommittee on the PLA issue met and decided to take no further action at this time, though we have extreme concerns about the transparency so far on how this PLA process evolved. It is recommended the CBOC conduct a data driven analysis on the value added of a PLA, the existing conditions that warrant a PLA and/or other construction delivery method to achieve a more cost effective bond program. To emphasize, our role is not to set policy but to make sure we report to the Public as accurately as possible the potential issues and impacts of a Project Labor Agreement.

As we move forward, the public and Board would be best served by a CBOC and Board that works together for a common goal and not let the PLA act as a wedge against further progress. Like it or not the Public and those in the Industry look to

our CBOC to opine on whether the Bond Program is improving, more transparent, structured and conducting best practices in facility construction. We have a collective wealth of experience on this Committee and are both best served by mutual cooperation and listening.

**Definition of Project Labor Agreements.** By way of definition, Project Labor Agreements (also known as Community Workforce Agreements or Project Stabilization Agreements) are a type of contract used in the construction industry to set the terms and conditions of employment on construction projects. Typically they are for large projects of long duration and complexity.

Most Project Labor Agreements contain the following elements:

- All workers must pay union dues and fees
- All workers must be hired through a union hiring hall and
- Contractors are limited to a specified number of core (company) workers per site
- Only union apprentices can work
- Workers must pay into union benefit packages

Proponents argue among other factors Project Labor Agreements:

- Ensure that large and complex projects are completed on time and within budget and allow parties to accurately predict labor costs and production timetables, which means more accurate bidding and lower overall costs.
- Provide construction contractors with flexible access to a stable workforce that is highly skilled and trained.
- With a PLA, wage rates benefits, work rules, safety, scheduling, dispute resolution, and communication strategies that are agreed upon before the bid process which fosters communication among all project stakeholders.
- A PLA has a hire local emphasis in hiring ensuring that local tax dollars have the greatest impact on the local economy by creating quality jobs and supporting careers for local workers.

Opponents of Project Labor Agreements argue among other factors:

- Costs will rise because the nature of a PLA is to limit competition and the number of bidders on any given construction bid.
- PLA's hurt minority and women owned firms as they tend to be smaller non-union firms.
- Firms are forced to hire a specific group of employees rather than choose

wider number of potential workers or ones that had previously worked for that firm and were satisfactory.

These are only partial lists. A more thorough study will follow by the CBOC.

### **History of actions to date relative to the Project Labor Agreement Issue**

The following is a recent history of the Project Labor Agreement and Board of Trustees Actions, and Citizen Bond Oversight Committee recommendations regarding Project Labor Agreements:

**June 6, 2015 (S-1 Board Communications and/or Request for Information).** Trustee Hall requested that a Project Labor Resolution be brought forward and indicating she had heard good things can come from PLA's.

**June 17, 2015 (CBOC Agenda Item 9-Report from CBOC Chair and Calboc Annual Meeting).** The Chair mentioned the referral from Trustee Hall. There was a brief CBOC discussion and the consensus was that the CBOC should defer comment on this issue until something specific was presented to the Board.

**October 12, 2015 (Board Item Q-3 Resolution 4391).** This item was docketed on Friday October 9, 2015 with no input sought or notice provided to the CBOC other than a phone call to the Chair the Thursday night prior by Mr. Aguirre to the Chair that a Resolution was coming forward. The Agenda Item stated:

*“Adopt Resolution No. 4391, Resolution Directing Staff to Negotiate the Terms of a Project Labor Agreement (PLA) for Proposition O or Mello-Roos CFD Funded School Construction, Repairs, and Renovation”.*

The Agenda Item explanatory text was as follows:

*“The district is responsible for promoting effective public works project delivery for projects funded by Proposition O or Mello-Roos Community Facilities Districts (“CFD”) to ensure the following community interests are met: 1) projects are completed on time and within budget to maximize the efficiency of the district’s participation in the construction marketplace, and to the extent allowed by law; 2) encouraging participation of all interested parties in construction projects funded by Proposition O or Mello-Roos CFD Funds and at the same time promoting opportunities for local workers and small businesses; and 3) providing for the involvement of state-approved joint-labor management apprenticeship programs for the training and development of future generations of workers. The district believes utilizing a PLA is the best way to meet these needs. To utilize a PLA, staff needs to be directed to negotiate the terms of a Project Labor Agreement for projects funded by Proposition O or Mello-Roos CFD Funds with the San Diego Building and Construction Trades Council.”*

**October 12, 2015 (CBOC Chair presents a letter to Board of Trustees regarding the Project Labor Agreement Issue).** The letter to the Trustees stated:

*“Our recent Special Citizen’s Bond Oversight Committee (CBOC) Meeting on September 9, 2015 and subsequent conversations with the District seemed to indicate we were going to be working*

together in the spirit of mutual cooperation and transparency. The CBOC is very clear that we wanted to be listened to by the Board of Trustees and District staff.

In support of this positive approach, our CBOC would like the Board to table this Resolution at this time, until our CBOC can meet and provide you input on this matter. Before you enter down the process of negotiating a PLA, the Board should want to hear the views of the CBOC.

There does not appear to be an immediate need to go down this path for the Bond Program, as expenditures are now winding down with the current bond issue. For instance, there may be internal process and record keeping improvements that need to be made before you enter into negotiations, as PLA's can involve significant documentation and record keeping requirements. A "go a bit" slower approach is warranted. The Public needs to fully hear and discuss this issue including in the forum of a Bond Oversight Committee meeting."

### **October 15, 2014 (CBOC Special Meeting Held to discuss Project Labor Agreements).** The CBOC adopted the following recommendations:

1. *In the interest of public trust and transparency the CBOC requests a 4 month moratorium on Resolution No. 4391 to assess data on the pros and cons of Project Labor Agreements. In addition the CBOC would like to assess and recommend; better construction delivery methods, pre qualification requirements for the contractor pool, inspection process, and methods of project management that would address the totality of the problems impacting projects from being on budget, on time, and with quality work.*
2. *The Chair should write a letter to the Board indicating the above action and depending on the outcome the CBOC may consider further actions in the future.*

The Special Meeting was characterized as thoughtful due diligence by the CBOC. There was a clear reiterated frustration for not including the CBOC or the Public in an active discussion on the merits (e.g. value added) of a Project Labor Agreement for this Bond Program.

### **Role of Bond Oversight Committee in Reviewing Project Labor Agreements**

By the nature of Bond Oversight, our role is to focus on the expenditure or potential (see below) expenditure of bond proceeds impact on the Bond Program. The analysis of impacts includes the review of the ways of doing business such as a PLA cost saving measures associated with joint use, and utilizing reusable design plans.

Our role is to report to the Public not set policy, make final contract decisions, or determine which projects to fund. However by reporting bond spending and practices, we are the eyes and ears of the Taxpayers. Active Citizen Bond Oversight Committees were one of the key conditions that must be met to get a lower 55% approval rate of School General Obligation Bonds.

The Education Code, California Constitution, and the Legislative intent of Proposition 39 that governs Bond Oversight indicates that our role is not just to review after the fact expenditures:

1. Bond Oversight Committees are formed Prior to Actual Expenditures (Education Code Section 15278). It is required the Bond Oversight Committee be formed within 60 days of a certified election. Presumably little or no expenditures would be made during this time frame i.e. it is prior to actual spending and yet one could argue the intent was for a CBOC to review decisions before they were made.

2. The Education Code does not specifically limit the reporting on expenditures until after the fact. California Education Code Section 15278 (b) states:

*“The citizens' oversight committee shall **actively** (emphasis added) review and report on the proper expenditure of taxpayers' money for school construction.”*

Nowhere in the Education Code does it specifically state something like “after such expenditures occur” or “upon implementation of the Bond Projects”. Project Labor Agreements were not referenced in ballot language for the Proposition O Bond measure. PLA's are almost always implemented after voters approve the borrowing.

3. The citizens' oversight committee shall actively review expenditures have or might be expended. Education Code Section 15278 states:

*“The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues.”*

The word "concerning" is broad and gives the CBOC latitude to report on anything that relates to expenditures, which would include the plan on how and when the expenditures would take place or proposed methods of procurement and project delivery such as Project Labor Agreements, design build, or pre qualification of contractors under the design bid build approach.

4. Broad Review of **proposed** Cost Saving Measures are under the purview of the Bond Oversight Committee. California Education Code Section 15278 (b)(5) says the Oversight Committee has responsibility for:

*"Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to:*

- (A) Mechanisms designed to reduce the costs of professional fees.*
- (B) Mechanisms designed to reduce the costs of site preparation.*
- (C) Recommendations regarding the joint use of core facilities.*
- (D) Mechanisms designed to reduce costs by incorporating efficiencies in school site design.*
- (E) Recommendations regarding the use of cost-effective and efficient reusable*

*facility plans.”*

Because PLAs are cost-saving measures or in the case of the opponents probably have negative cost impacts, the bond oversight committees certainly have authority to review such proposals. It does not make sense to just review cost savings measures only after they are implemented.

7. Bond Oversight is all about Accountability for decisions and reporting on whether what was promised to the voters was actually implemented. The reference to “include but not limited too” in Education Code Section 15284 was legislative intent for the Oversight Committee to have the authority to review matters such as unorthodox or innovative bidding requirements.

It is important to note the language in the California Constitution under Article IIIA, Section 1.b.3(B), which states:

*“This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following “accountability” requirements:*

*a. a list of the specific school facilities projects to be funded and certification*

*b. the school district board, community college board, or county office of education has evaluated safety, class size reduction and information technology needs developing that list.”*

Some key words in the language above are “accountability”, “certification”, and “evaluated”. It is reasonable to assume the district performed a formal evaluation of safety and other needs in developing a prioritized and specified project list prior to the election that was approved by the board. An authorized spending plan prepared the District takes into account the prioritized and specified projects authorized by the voters.

If the implementation plan and authorization plans are being revised to change the priority of projects, then the district may not be in compliance with the accountability requirements of the Constitution. In fact, the law specifies that CBOC’s are supposed to ensure the district has complied with Article XIII A, Section 1.b.3 of the Constitution.

8. Bond Committees are required to issue reports which presumably deal in part with Special Issues as they arise such as Project Labor Agreements. Education Code Section 15278 states:

*“The citizens’ oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens’ oversight committee and all documents received and*

*reports issued shall be a matter of public record and be made available on an Internet Web site maintained by the governing board of the district.”*

The CBOC should report on the results of its review of the implementation and authorization plans. Such information should be included in the annual report. This sends a message to the Community that the CBOC is being comprehensive in its review i.e. “issue regular reports” as referenced in the Education Code.

9. A School Waste Bond Prevention Action is permitted which provides a mechanism to stop bond spending either before the fact or after such expenditures have started for bond proceeds (Education Code Section 15284). Specifically such expenditures may be such subject to a restraining order if:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.

10. The entirety of the Constitutional Amendment Proposition 39: *Strict Accountability in Local School Construction Bonds Act of 2000*, when read as a whole, quite thoroughly describes the Legislature’s interest in ensuring proper expenditures, and having a BOC review and report is meant as part of that effort. The “quid pro quo” of a lower threshold level of voter approval (2/3 to 55%) was strong citizen oversight.

Section 15264 states: It is the intent of the Legislature that all of the following are realized:

(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.

(b) Taxpayers directly participate in the oversight of bond expenditures.

(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.

(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.

In summary, the 'Cliff Note Phrase' that describes the role of the CBOC is to tell the public whether the actions committed by the Policymakers is consistent and supportive of what was promised to the voters.

### **Meeting of an Ad Hoc Subcommittee on Project Labor Agreements**

The Chair convened an Ad Hoc Subcommittee consisting of four members (Marinovich, Munoz, Carriedo, Gutowski). This is a diverse Committee of construction, government, budgeting/fiscal and legal experience. There is probably near 100 years of collective professional experience brought to this CBOC by these four individuals.

The Ad Hoc Committee recommended that no further progressive action (eg. Vote of No Confidence) be taken at this time. Essentially a "wait and see" position was felt warranted.

There was a strong concern about the lack of District Transparency and vetting on this Project Labor Agreement issue by the District. The Ad Hoc Subcommittee emphasized the importance of the CBOC reporting to the Public on whether the Project Labor Agreements entered into the District would result in the proper expenditure of bond proceeds. As the process proceeds it was recommended the CBOC have strong consideration into the negotiation public dialogue input.

Moving forward, it was recommended the CBOC conduct a data driven analysis of the current and historical conditions of the Sweetwater Bond Program that may warrant the need for a PLA. These data requirements include but are not limited to:

- Residential location of construction workers
- Problems if any associated with Union and non Union apprentice workers
- Construction quality issues with Union and non Union contractors
- Reasons for historical change orders for Bond Projects
- Work stoppages
- Project delay causes
- Completion of Projects on Time and within budget
- Inspection Reports for Union and non Union workers
- Cost comparisons per square foot of projects

In short, while the District proceeds with the process of negotiations, the CBOC would collect information to report on the need and potential benefit/costs of Project Labor Agreements. This report is intended to start the positive dialogue.