

Section Five Reviews- The most important thing that many BOCs are NOT doing

Education Code section 15278 sets out many parameters about Bond Oversight Committees set up as a result of passing Prop 39 School Bonds. One of the areas covered by Section 15278 includes the 5 suggested activities that a BOC is recommended to engage in. In the order that they are listed in 15278, these activities are

- 1) Accepting and reviewing Performance Audit reports
- 2) Accepting and reviewing Financial Audit reports
- 3) Inspecting school facilities
- 4) Reviewing deferred maintenance programs, and
- 5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures.

Of these five activities, only Section 5, reviewing district efforts at implementing cost-saving measures, is given additional details. Under Section (5), the additional direction directs BOC to look at the following as examples of cost-savings measures that a District could engage in. They include

- A. Mechanisms to reduce the costs of Design fees
- B. Mechanisms to reduce the cost of site preparation
- C. Joint use of core facilities
- D. Incorporating efficiencies in schoolsite design
- E. Recommendations regarding the use of cost-effective and efficient reusable facility plans.

Of all the five activities outlined in 15278, Section Five is the one where BOCs often spend the least time, even though it is arguably the place where a BOC can have the most impact. This impact comes through two different mechanisms. First, Section Five is the section that is most proactive. Sections 1-3 all deal with expenditures that either have already occurred, while Section 4 deals with maintenance that has already been deferred and whose expense as already accrued. What Sections 1-4 have in common, and that Section 5 does not, is that they are focused on expenditures that have already been incurred. The “Cow has already left the barn” by the time that a Financial or Performance audit catches up with it. Under Section 5 however, a BOC has the ability to observe and report before expenditures have been made. Section 5 reviews are thus one of the only areas where the work of a BOC can flag potentially unwise expenditures before they occur, before the bond funds are irretrievably lost.

The second way in which Section Five reviews are the most impactful action that a BOC can perform is in the area of public confidence. There are few revelations as corrosive to public trust in school construction mechanisms as reports of wasteful spending that only come after the fact. In many Districts, there will be a need for additional capital expenditures in the not too distant future. These known future needs mean that most Districts will need to return to voters for additional bonds sooner rather than later. The performance of Section Five reviews means that the likelihood of future Bond campaigns needing to deal with the negative effects of over-spending is dramatically reduced. While Section Five reviews can thus have at least the potential to be uncomfortable in the near term, they are the best insurance possible to prevent truly large problems in the future.

What are Section Five reviews? Every District will be different, so every Section Five review will be different as well. However, the similarities between Section Five reviews usually are greater than the differences, and here Ed Code Section 15278 can give useful guidance.

The items listed in Section Five are usually a good place to start, but two deserve additional explanation.

What, if anything, has the District done in order to try and reduce the cost of design fees? This, and item E) are usually the most contentious. The predominant way to pay for design fees is with a contract that pays the design team a fee based upon a percentage of contract costs. The problem is that it sets up an inherent conflict of interest in that designers have a financial incentive to raise project costs and lose money if project costs go down. Other mechanisms exist, including hourly and lump sum, as do incentive methods for rewarding design teams for reducing project costs. While the alternate methods can take more work on the part of District staff, they can also save significant amounts of both time and money.

What, if anything, has the District done to take advantage of Pre-Checked or Re-usable facility plans? This item revolves around methods of procuring facilities plans other than those that are brand new. When a new set of plans are drawn from scratch, a series of issues arise. Problems with the design can lead to change orders. New plans need extensive review at the Division of the State Architect (DSA), and the total staff time that will be required in the process is unknown. However, for a facility design that has already been built, many of these issues fade away. The plans are already drawn, so while some degree of review is needed, the time needed is considerably less than when starting from scratch. Issues at DSA should, for the most part, have been caught the first time, further reducing time. Together, these factors can help reduce the uncertainty surrounding the effort needed by the design team on a project, which in turn means that fee structures other than percentage of contract price become more realistic.

It was for these reasons and others that items A and E were specifically added to Section Five.

What is a BOC to do? The answer is surprisingly simple: investigate the issues, consider the response of the District, and issue a report. The decision on whether to take advantage of these cost reduction opportunities is the job of the District; the task of the BOC is to honestly report how well the District did at this task. Much like an umpire, the job of the BOC is to pay attention, and then to call them like they see them.

The one caveat to this is where the opportunity for first cost reduction was ignored by the District, then the BOC really has an additional job. In this case the BOC will need to look at whether failure to follow the suggested cost reduction strategies resulted in higher costs. To evaluate this, the BOC will need to compare the prices paid by its own District for certain types of projects on a standardized unit basis (the most common of which is $\$/\text{ft}^2$) to costs for similar projects in other Districts. Other methods that can be used to establish benchmark costs include estimating guides such as those published by Dodge or R.S. Means, and surveys of school construction costs such as the one published by Paul Abramson. If no cost control was used and final costs are higher than those of nearby or reference Districts, then this information should be prominently included in the report.

Section Five operations. Like most of the other activities in 15278 (audits, facility inspections, etc.), Section Five reporting is most often accomplished by an independent subcommittee of the BOC. The skills that are valuable to have on a Section Five subcommittee include experience with contract negotiation, experience with construction management, and experience with public works.

Overall, Section Five reporting is among the most important tasks assigned to BOCs. How the District chooses to spend the money they receive from these bonds is their business; reporting to the public on how effectively the District has taken advantage of cost reduction opportunities suggested to them, whether those results are good or bad, is the job of the Bond Oversight Committee.