



Fairfield-Suisun Unified School District

"Fairfield-Suisun Unified School District is a premier learning community that empowers each student to thrive in an ever changing world."

MEASURE J CITIZENS' OVERSIGHT COMMITTEE MEETING

September 20, 2016 – 5:00 P.M.

**District Office, Conference Room 324
2490 Hilborn Rd
Fairfield, CA 94534**

AGENDA/PUBLIC NOTICE

Members of the public wishing to address specific items on the Citizens' Oversight Committee meeting agenda are requested to submit a *Request to Speak* form prior to the specific items being discussed by the Committee members (Governing Board Policy 9323). *Request to Speak* forms should be turned in to the Committee or designee, and shall only be for areas under the charge of the Committee. Each speaker will be allowed three minutes. A person with a disability may contact the District Superintendent's office at (707) 399-5009 at least 24 hours before the scheduled meeting to request receipt of an agenda in an alternative format or to request disability-related accommodations, including auxiliary aids or services, in order to participate in the public meeting.

- I. OPENING**
 - A. CALL TO ORDER, 5:00 P.M.**
 - B. WELCOME AND INTRODUCTIONS**

- II. INFORMATION ITEM/ACTION ITEMS**
 - A. REVIEW BOARD APPROVED BYLAWS**
 - B. BROWN ACT PROVISIONS/RESTRICTIONS**
 - C. ELECTION OF OFFICERS**
 - D. PUBLIC LABOR AGREEMENT (PLA)**
 - E. FUTURE MEETINGS AND LOCATIONS**

- III. PUBLIC COMMENT**

- IV. FUTURE AGENDA ITEMS**

Kris Corey, Superintendent

"In a safe, welcoming, and supportive learning environment, we provide innovative educational opportunities to develop resilient students who are inspired to succeed."

EXHIBIT B

CITIZENS' BOND OVERSIGHT COMMITTEE BYLAWS

Section 1. Committee Established. The Fairfield-Suisun Unified School District (the "District") was successful at the election conducted on June 7, 2016 (the "Election"), in obtaining authorization from the District's voters to issue up to \$249,000,000 aggregate principal amount of the District's general obligation bonds (the "Bond Measure"). The Election was conducted under Proposition 39, being chaptered as the Strict Accountability in Local School Construction Bonds Act of 2000, at Section 15264 et seq. of the Education Code of the State of California ("Prop 39"). Pursuant to Section 15278 of the Education Code, the District is now obligated to establish the Committee in order to satisfy the accountability requirements of Prop 39. The Board of Trustees of the District (the "Board") hereby establishes the Citizens' Bond Oversight Committee (the "Committee"), which shall have the duties and rights set forth in these Bylaws. The Committee does not have independent legal capacity from the District.

Section 2. Purposes. The purposes of the Committee are set forth in Prop 39, and these Bylaws are specifically made subject to the applicable provisions of Prop 39 as to the duties and rights of the Committee. The Committee shall be deemed to be subject to the *Ralph M. Brown Act* (Government Code section 54950 et seq.) and shall conduct its meetings in accordance with the provisions thereof. The District shall provide necessary administrative support to the Committee as shall be consistent with the Committee's purposes, as set forth in Prop 39. The proceeds of general obligation bonds issued pursuant to the Election are hereinafter referred to as "bond proceeds." The Committee shall confine itself specifically to bond proceeds generated under the Bond Measure. Regular and deferred maintenance projects and all monies generated under other sources shall fall outside the scope of the Committee's review.

Section 3. Duties of the Committee. To carry out its stated purposes, the Committee shall perform the following duties:

- 3.1 Inform the Public. The Committee shall inform the public concerning the District's expenditure of bond proceeds.
- 3.2 Review Expenditures. The Committee may review quarterly expenditure reports produced by the District to ensure that (a) bond proceeds are expended only for the purposes set forth in the Bond Measure; and (b) no bond proceeds are used for any teacher or administrative salaries or other operating expenses.
- 3.3 Annual Report. The Committee shall present to the Board, in public session, an annual written report which shall include the following:

- (a) A statement indicating whether the District is in compliance with the requirements of Article XIII A, Section 1(b)(3) of the California Constitution; and
- (b) A summary of the Committee's proceedings and activities for the preceding year.

Section 4. Authorized Activities. In order to perform the duties set forth in Section 3, the Committee may engage in the following authorized activities:

- 4.1 Review Audit. Receive and review copies of the District's annual independent performance audit and annual independent financial audit required by Article XIII A of the California Constitution.
- 4.2 Inspect Facilities. Inspect District facilities and grounds for which bond proceeds have been or will be expended in accordance with any access procedure established by the District's Superintendent.
- 4.3 Review Cost Saving Measures. Review efforts by the District to maximize bond proceeds by implementing various cost-saving measures.
- 4.4 Limitation of Committee Authority. The Committee's authority is limited to such powers expressly granted to the Committee by these by-laws, California law, and action by the Board.

Section 5. Duties of the Board/Superintendent. Either the Board or the Superintendent, as the Board shall determine, shall have the following powers reserved to it, and the Committee shall have no jurisdiction over the following types of activities:

- (a) Approval of construction contracts;
- (b) Approval of construction change orders;
- (c) Appropriation of construction funds;
- (d) Handling of all legal matters;
- (e) Approval of construction plans and schedules;
- (f) Approval of Deferred Maintenance Plan; and
- (g) Approval of the sale of bonds.

Section 6. Membership.

- 6.1 Number. The Committee shall consist of a minimum of seven (7) members appointed by the Board from a list of candidates submitting written applications, including staff recommendations, and based on criteria established by Prop 39, to wit:
- One (1) member who is a parent or guardian of a child enrolled in the District.
 - One (1) member active in a business organization representing the business community located in the District.
 - One (1) member active in a senior citizen's organization.
 - One (1) member active in a bona-fide taxpayers association.
 - One (1) member who is both
 - A parent or guardian of a child enrolled in the District; and
 - Active in a parent-teacher organization, such as the Parent-Teacher Association, or a school site council.
 - Two (2) members of the community at-large appointed by the Board.
- 6.2 Qualification Standards.
- (a) To be a qualified person, he or she must be at least 18 years of age and reside within the District's geographic boundary, in accordance with Government Code section 1020.
 - (b) The Committee may not include any employee, official of the District or any vendor, contractor or consultant of the District.
- 6.3 Ethics: Conflicts-of-Interest. By accepting appointment to the Committee, each member agrees to comply with Articles 4 (commencing with Section 1090) and 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code and the Political Reform Act (Gov. Code §§ 81000 et seq.), and to complete the Form 700 as required by all "designated employees" of the District.
- 6.4 Term. Except as otherwise provided herein, each member shall serve a term of three (3) years, beginning September 1, 2016. No member may serve more than three (3) consecutive terms. At the Committee's first meeting, members will draw lots to select a minimum of three (3) members to serve for an initial two (2) year term and the remaining members for an initial three (3) year term.
- 6.5 Appointment. Members of the Committee shall be appointed by the Board through the following process:

- (a) Appropriate local groups will be solicited for applications;
- (b) The Superintendent or his or her designee will review the applications; and
- (c) The Superintendent or his or her designee will make recommendations to the Board.

6.6 Removal; Vacancy. The Board may remove any Committee member for any reason, including failure to attend two consecutive Committee meetings without reasonable excuse. Upon a member's removal, his or her seat shall be declared vacant. The Board, in accordance with the established appointment process shall fill any vacancies on the Committee.

6.7 Compensation. The Committee members shall not be compensated for their services. The private and personal property of the Committee members shall be exempt from execution or other liability for any debts, liabilities or obligations of the District or the Committee, and no Committee members shall be personally liable or responsible for any debts, liabilities or obligations of the District or the Committee except where expressly set forth in California law.

6.8 Authority of Members.

- (a) Committee members shall not have the authority to direct staff of the District unless such authority is expressly authorized by the Board.
- (b) Individual members of the Committee retain the right to address the Board, either on behalf of the Committee or as an individual.

Section 7. Meetings of the Committee.

7.1 Regular Meetings. The Committee is required to meet at least once a year.

7.2 Location. All meetings shall be held within the Fairfield-Suisun Unified School District located in Solano County, California.

7.3 Procedures. All meetings shall be open to the public in accordance with the *Ralph M. Brown Act*, Government Code section 54950 et seq. Meetings shall be conducted according to such additional procedural rules as the Committee may adopt. A majority of the number of Committee members shall constitute a quorum for the transaction of any business except adjournment.

Section 8. District Support.

- 8.1 The District shall provide to the Committee necessary technical and administrative assistance as follows:
- (a) Preparation of and posting of public notices as required by the *Brown Act*, ensuring that all notices to the public are provided in the same manner as notices regarding meetings of the District Board;
 - (b) Provision of a meeting room, including any necessary audio/visual equipment;
 - (c) Preparation and copies of any documentary meeting materials, such as agendas and reports;
 - (d) In accordance with Education Code section 15280(b), retention of all Committee records, and providing public access to such records on an Internet website maintained by the District;
 - (e) The taking and maintaining of minutes of the Committee meetings, which minutes shall, at a minimum, include an identification of all Committee members present and absent at any meeting of the Committee, and a statement of the vote on each issue of business directed, determined or set out by the Committee; and
 - (f) Arranging tours and inspections of school facilities and grounds as may be reasonably scheduled by the Committee, as set forth in Section 4.2 above.
- 8.2 District staff and/or District consultants shall attend all Committee proceedings in order to report on the status of projects and the expenditures of bond proceeds.

Section 9. Reports. In addition to the Annual Report required in Section 3.3, the Committee may report, as needed, to the Board in order to advise the Board on the activities of the Committee. Such report shall be in writing and shall summarize the proceedings and activities conducted by the Committee.

Section 10. Officers. The Superintendent shall appoint the initial Chair. Thereafter, the Committee shall elect a chair and a vice-chair, who shall act as Chair only when the Chair is absent.

Section 11. Amendment of Bylaws. Any amendment to these Bylaws shall be approved by a majority vote of the Board, as required by California law.

Section 12. Termination.

12.1 The Committee shall be disbanded at the end of the fiscal year in which:

- (a) All Prop 39 bond proceeds, and earnings thereon, have been expended;
- (b) The Committee has issued its final Annual Report as required under Section 3.3 above; and
- (c) The Committee has completed and conducted its final meeting, which shall be scheduled after notice of 12.1(a) herein occurs.

12.2 The District (pursuant to its records retention policy) shall keep all records of the Committee for a period of at least two (2) years after the disbanding of the Committee as provided for herein.

Fairfield-Suisun Unified School District
Measure J Citizens' Oversight Committee

September 20, 2016, 5:00 P.M.

The Brown Act

I. Purposes of the Brown Act

- A. To keep the public informed of the actions, debates and views of locally elected representatives; and
- B. To provide the procedural framework for local legislators to meet, debate, act and listen collectively to their constituents.

II. Applicability: Applies to a “member of the legislative body of a local agency” which includes “[a]ny person elected to serve as a member of a legislative body who has not yet assumed the duties of office...” Once elected, officials are expected to know the requirements of the Brown Act, even before taking office. (Government Code § 54952.1)

III. Legislative Body

- A. Includes any:
 - 1. Commission
 - 2. Committee
 - 3. Board
 - 4. Other body
 - 5. Also includes advisory committees that are standing committees that have continuing subject matter jurisdiction or fixed meeting schedules. (Government Code § 54952)
- B. Whether:
 - 1. Permanent or Temporary
 - 2. Decision-making or advisory
 - 3. Established by charter, ordinance, resolution, or *formal action of the Board*. (Government Code § 54952)

IV. Meetings

- A. Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body; or
- B. Any use of direct communication, personal intermediary, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence (Government Code § 54952.2), including:
 - 1. Telephone, email, facsimile, internet, blogs, facebook, etc.;
 - 2. Communication through an intermediary.
- C. Common scenarios that **are** likely meetings:
 - 1. E-mail messages, text messages, etc., in which majority of Board/Committee is copied;
 - 2. Consecutive conversations through intermediary to poll the Board/Committee;
 - 3. Telephone conference calls involving a majority of the Board/Committee;
 - 4. Internet chat rooms, blogs, or list-serves in which a majority of the Board/Committee may post comments and responses such that deliberations, discussions or opining can be viewed as a path to a “concurrence.”.
- D. Common scenarios that are likely **not** meetings:
 - 1. Telephone conversation between a Board/Committee member and “any other person” (including one other Board/Committee member);
 - 2. Appearance of a Board/Committee majority at a general conference open to the public involving a discussion of broad issues and attended by a broad spectrum of officials from a variety of governmental agencies;
 - 3. Attendance at open and publicized meetings, organized to address a topic of local concern by a person or organization other than the local agency;
 - 4. Social or ceremonial occasions.
 - 5. Attendance by a Board/Committee majority at open and noticed meetings of another body of the same local agency or any other agency;
 - 6. Attendance by a Board/Committee majority at an open and noticed meeting of a standing committee of the Board, if members of the Board that are not members of the committee attend only as observers. (Government Code § 54952.2)
 - 7. Members must not discuss topics within the subject matter of the Board/Committee “other than as part of the scheduled program.”

- E. **Meetings – substance v. procedure:** Communication limited to providing information (i.e., Superintendent’s weekly report) or procedural or administrative matters (scheduling meetings, determining agenda and time allotted to each of them) do not constitute meetings if they do not constitute *substantive* discussions of a topic within the subject matter of the Board/Committee.

- F. **Meetings – developing a collective concurrence:** Test: If discussion can potentially contribute to developing a collective concurrence, it is likely to constitute a “meeting” for Brown Act purposes. Even if a Board/Committee member does not participate in a discussion, the mere act of listening may contribute to developing a collective concurrence.

- G. **Meetings – conduct**
 - 1. Regular meetings at least monthly with fixed time and place (Not applicable to an oversight committee)
 - 2. Meeting place must be within District boundaries, with limited exceptions (Government Code § 54954)
 - 3. Meeting place must be accessible to public (nondiscriminatory, accessible to disabled, no payment or purchase required)
 - 4. Teleconferencing: must be from publicly accessible location; at least quorum must be within the District boundaries
 - 5. Any person attending may videotape, unless disruptive

V. **Agenda Requirements**

- A. 72 hours before regular meeting; 24 hours before special meeting

- B. Sufficient detail to allow public to determine whether to participate (“brief general description”)

- C. Exceptions to standard agenda requirements
 - 1. Emergency (majority vote);
 - 2. Need to take immediate action that arose after agenda posted (2/3 vote, unanimous if less than 2/3rds of Board/Committee present);
 - 3. Responding to questions;
 - 4. Asking for clarification;
 - 5. Making a brief announcement or brief report of activity.

VI. Closed Session – Likely Not Applicable to Oversight Committees

- A. Real property transactions
- B. Pending and anticipated litigation
- C. Tort Claims
- D. Threat to the public
- E. Personnel Actions – Appointment, employment, evaluation, discipline/dismissal/release
- F. Hearing “Complaints or Charges” against employees require 24-hour notice of right to open session
- G. Negotiations with represented employees/discussions with unrepresented employees
- H. Student expulsion hearings

VII. Violations of the Brown Act

- A. Misdemeanor liability exists if there is “intent to deprive public”
- B. Public can sue to stop violation of Brown Act
- C. Require taping of closed session possible remedy
- D. Agency must be given opportunity to cure
- E. Nullification of action taken in violation

Fairfield-Suisun Unified School District
August 25, 2016 Board Meeting

Project Labor Agreements (PLAs)

Phil Henderson



PLAs: Some Background First

- State law requires, regardless of union membership or whether a Project Labor Agreement (PLA) is implemented, that all contractors on public works projects pay each worker the prevailing wage for the classification of the work performed by that worker.
- In addition to withholding taxes, social security, etc., the contractor must certify on its payroll records that it has either:
 - Paid the worker the entire prevailing wage or
 - Paid any amount not paid to the worker on behalf of the worker into health plans, defined benefit plans, defined pension plans, apprenticeship plans, etc.

PLAs: The Basics

- A PLA is an agreement proposed by trade unions, between the trade unions, a project owner, and all contractors on the project owner's projects.
 - “ ‘Project labor agreement’ means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.” (California Public Contract Code § 2500.)
 - The reality is that although the District is generally considered a party to the PLA, it is a party only in the sense that it would agree to make the PLA part of the District's contract with its contractor(s).

PLAs: The Politics – Anti-PLA

- President George W. Bush issued Executive Order 13202 on February 17, 2001 (“*Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects*”) which ordered federal funds **cannot** be provided or used on any project if there are any agreements that:
 - “**Require** or prohibit bidders, offerors, **contractors**, or subcontractors **to enter into or adhere to agreements with one or more labor organizations**, on the same or other related construction project(s);”
(Section 1(a) of that Order; emphasis added.)


PLAs: The Politics – Pro-PLA

- President Barack Obama issued an Executive Order on February 6, 2009 (“*Use of Project Labor Agreements for Federal Construction Projects*”) which stated that, to prevent problems regarding “large-scale” construction projects:
 - “[I]t is the **policy of the Federal Government to encourage** executive agencies to consider requiring the use of **project labor agreements** in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.”


(Section 1(b) of that Order; emphasis added.)



PLAs: Standard Terms

- **Registration.** All employees of all contractors and subcontractors must register with the appropriate trade union. Although contractors' workers can decide individually whether to join the applicable union, every contractor's workers must comply with the union security provision of the applicable collective bargaining agreement.
 - **Referral.** All employees of all contractors and subcontractors will be hired out through that union hall referral system.
 - **Contribution.** All employees of all contractors and subcontractors shall contribute to that trade union's health, fringe, pension, apprenticeship, and other benefit plans. Non-union contractors argue that this reduces their ability to compete if they have to maintain current coverages as well.
 - **Representation Fees.** All employees of all contractors and subcontractors must pay union initiation fees, union dues or representation fees to the applicable union or Council.
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PLAs: Standard Terms

- **Sole Representative.** The unions become the sole representative of the workers on the projects.
 - **Core Employees.** Only a limited number of a contractor's "core" employees could be dispatched to that contractor. The number of core employees will be limited.
 - **No Strike.** There is a "no-strike" clause that all signatory unions must comply with.
 - **Local Hire.** Some PLAs have a "local hire" focus or provision.
 - **Skilled Workforce.** Some recent PLAs have a "skilled workforce / labor force" requirement.
 - **Internship.** Some PLAs have an internship programs for students.
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Example of Differing Views - Referrals

- Non-union contractor employees have to go through the union hall referral system, pay initiation fees, and pay all benefit payments to union fringe benefit programs, regardless of their current coverage.
 - Non-union contractors argue that this can reduce competition of non-union contractors and consequently drive up bids.
 - Union representatives argue that most non-union contractors are providing no such benefits or inferior benefits and that a PLA actually balances the competition.

Example of Differing Views – Core Employees

- Limiting “core” employees means contractors can only designate a few workers on their crews and otherwise must take the “next in line” worker being dispatched through the union hall.
 - Non-union contractors argue they will only have a few workers they have used before on their crews, leading to disruption, inefficiencies and supervision problems.
 - Union representatives argue that all contractors should be using labor that is dispatched from the union hall and these workers are better trained.

PLAs: Some Reasons to Implement a PLA

- Remove union work stoppages or strikes based on labor disputes or grievances on District projects.
- A PLA can include union commitments to encourage bidder participation in District projects.
- If the District decides it intends to utilize the new law that allows it to utilize “job order contracting,” the District must have a PLA on all District projects in excess of \$25,000.
- If the District decides it intends to utilize a “lease-leaseback” delivery method or a “design-build” delivery method, a PLA will allow the District and its contractors to more easily comply with new “skilled workforce” requirements.

Some Reasons to NOT Implement a PLA

- It is very rare for work stoppages or strikes to happen on a school project.
- Some contractors may not bid on projects if there is a PLA, which can be more severe in a busy marketplace with many projects out to bid.
- If the non-union contractors are correct regarding an increase burden on their benefits to workers, their bids will become less competitive and prices could increase.

PLAs: Virtually Impossible to Find Objective Studies

- “Measuring the Cost of [PLAs] on School Construction in California,” National University System Institute for Policy Research (NUSIPR), July 2011.
(<http://www.nusinstitute.org/assets/resources/pageResources/Measuring-the-Cost-of-Project-Labor-Agreements-on-School-Construction-in-California.pdf>)
Underwritten, in part, by the Associated Builders and Contractors, California Corporation Committee (ABC), an anti-PLA group. Validated by University of Southern California’s Keston Institute for Public Finance and Infrastructure Policy, at the request of ABC
 - Found a 13% to 15% cost increase in California school projects attributed to PLAs.
 - The University of California, Los Angeles (UCLA) Labor Center / California Construction Academy criticized NUSIPR methodology and conclusions, in a white paper written by Uyen Le, an IBEW (electrical union) representative.
 - NUSIPR responded to and rejected UCLA’s critique.
(<http://www.nusinstitute.org/assets/resources/pageResources/nusiprresponsetolaborctr.pdf>)

PLAs: Possible Next Steps

- **Meeting with Pro-PLA Persons.** District staff and a non-quorum number of District Board members can meet with representatives of local trade unions to discuss a PLA.
- **Meeting with Anti-PLA Persons.** Similarly, District staff and a non-quorum number of District can meet with community members that oppose PLAs (e.g., the Associated Builders and Contractors “[“ABC”]).

PLAs: Possible Next Steps

- **CBOC.** The final decision on a PLA is the Board's to consider, but a school district should inform its Citizens' Bond Oversight Committee ("CBOC") of the consideration and give the CBOC the opportunity to opine on the subject. Whether or not a PLA adds costs to a bond program is not agreed-upon, so it is a topic that arguably comes within a CBOC's role to review school district expenditures related to a bond program.