

MINUTES

CALIFORNIA EDUCATIONAL
FACILITIES AUTHORITY (CEFA)
5th Floor Conference Room
915 Capitol Mall, Room 587
Sacramento, California 95814

Alternate Location for CEFA Teleconference Participation

University of Southern California
3601 Trousdale Parkway
Office of Vice President for Student Affairs
Student Union Building 201
Los Angeles, CA 90089-4891
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THIS MEETING WILL BE HELD JOINTLY
WITH THE CALIFORNIA HEALTH
FACILITIES FINANCING AUTHORITY (CHFFA)

Thursday, December 3, 2009

1:30 PM

Deputy State Treasurer Patricia Wynne, serving as Chairperson, called the CEFA meeting to order at 1:30 p.m.

CEFA Roll Call

Members Present: Patricia Wynne for Bill Lockyer, State Treasurer, Chairperson
John Hiber for John Chiang, State Controller, Vice-Chairperson
Miriam Ingenito for Michael C. Genest, Director, Department of Finance
Michael Jackson via teleconference

Members Absent: Sylvia Scott Hayes

Staff Present: Ronald Washington, Executive Director
Barbara J. Liebert, Executive Director, CHFFA
Rosaling Brewer, Deputy Executive Director

Chairperson Wynne declared a quorum present.

CHFFA Roll Call

Deputy State Treasurer Patricia Wynne, serving as chairperson, called the CHFFA meeting to order at 1:35 p.m. and declared a quorum present after the secretary called the roll.

Approval of CEFA Minutes

The minutes from the California Educational Facilities Authority's (CEFA) October 29, 2009 meeting were approved. Michael Jackson moved for approval of the minutes; John Hiber seconded the motion. The motion was adopted with a 4-0 roll call vote.

Approval of CHFFA Minutes

The minutes from the California Health Facilities Financing Authority's (CHFFA) October 8, 2009 meeting were approved. Ruth Holton-Hodson moved approval and Jack Buckhorn seconded the motion. The minutes were approved with a 7-0 roll call vote (Dr. Sablan and Judith Frank abstained).

CEFA's Executive Director's Report

Ronald Washington provided the Executive Director's report as of October 31, 2009 noting the following: CEFA had issued bonds totaling approximately \$9,512,468,538 and currently had approximately \$4,578,108,382 in bonds outstanding; the CEFA fund balance was \$4,804,496, reflecting income of \$10,854 and expenditures of \$168,636; the Student Loan Program Fund had issued approximately \$265,372,500 in bonds and currently had \$21,590,000 in bonds outstanding; and the Student Loan Program fund balance was \$7,577,516.

CHFFA's Executive Director's Report

Ms. Liebert provided the Executive Director's report and items of interest to the CHFFA Board.

Ms. Liebert asked Chairperson Wynne to move Item #13 of the CHFFA Agenda out of order to accommodate the Borrowers.

Item #7

Approval of the Tentative Meeting Schedule for 2010

Ronald Washington reported CEFA's regulations state meetings of the Authority will be held on the fourth Thursday of each month unless otherwise ordered by the Authority. Mr. Washington stated it has been the custom of the Authority to meet on the last Thursday of the month and because of this, the Authority must vote on a tentative meeting schedule.

Mr. Hiber (CEFA Member) moved for adoption of the Resolution and Ms. Ingenito (CEFA Member) seconded the motion. The motion was adopted with a 4-0 roll call vote.

Chairperson Wynne stated Item# 8 and Item #9 were relatively the same issue and would be presented one at a time.

Item #8

Resolution of the California Educational Facilities Authority Delegating Certain Powers and Authorizing Certain Actions Related to Bond Financings Resolution No. 2009-05

Mr. Washington stated in January of the current year, the Authority approved a master delegation resolution for certain powers to be delegated to both the Executive Director and the Deputy Executive Director. It was agreed staff would bring the resolution back to the Authority with any changes.

Mr. Washington stated he and Ms. Liebert have worked through the master delegation resolutions, along with the Attorney General's Office, STO counsel, and several bond counsel firms, and are recommending putting a new resolution into place that reflects a few substantive changes.

Chairperson Wynne asked Mr. Washington to report on what types of issues fell under the master delegation resolution during the last year.

Mr. Washington responded he was aware of two items CEFA had approved during the year that fell under the master delegation resolution. Mr. Washington said in July, Saint Mary's College requested to amend and restate their loan agreement because of changes to the current tax law requiring the college to modify their classified unrestricted assets. Because of that requirement, Saint Mary's needed changes in their supplemental loan agreement. Mr. Washington said he worked with the Attorney General's Office and approved the reinstated loan agreement. Also, Chapman University came to the Authority in November with a substitution of a letter of credit provider.

Chairperson Wynne stated there was a concern by the CEFA Board when this resolution was passed that the delegation was too broad. The Board requested monthly reporting of activity and placed a one-year sunset on the resolution. Chairperson Wynne said this Resolution would extend the delegation, and keep the reporting requirement intact.

Chairperson Wynne invited Ms. Liebert to present Item #9 to open the conversation and comments to include the CHFFA Members.

Item #9

**Resolution of the California Health Facilities Financing
Authority Delegating Certain Powers and Authorizing
Certain Actions Related to Bond Financings
Resolution No. 2009-05**

Ms. Liebert stated an example of applying the Master Delegation Resolution to CHFFA transactions would be changing the remarketing agent within the Indenture or the Loan Agreement. Ms. Liebert said when this resolution was initially brought before the CHFFA Board earlier in the year, staff estimated there may be the need to utilize it three or four times a month because of the market challenges, but had only four or five related issues over the course of the year.

Ms. Liebert said the Attorney General's Office has reviewed the specifics of the resolution, the staff reports for both CEFA and CHFFA, and the changes that were made to the resolutions.

Mr. Jackson (CEFA Member) stated his concerns of the Board not being involved on decisions in respect to Section 7 of the resolution, which refers to the merger and dissolution of an entity. Mr. Jackson felt the Board should be involved in handling and making the decisions of such a large issue. Mr. Jackson was also concerned of an open-ended sunset.

Chairperson Wynne responded the Resolutions were changed to reflect a one-year sunset.

Ms. Liebert responded there is a delicate balance staff is trying to achieve by delegating some of the transactions that may not merit going before the Board. Ms. Liebert stated each transaction that comes before staff as part of the delegation resolution is reviewed by the Attorney General's Office to ascertain first whether or not it qualifies under the delegation resolution and also reviews the actual transaction issue.

Ms. Sousa (CHFFA Member) asked Ms. Liebert where the language was reflected in the resolutions, noting in Section 15 of both the CEFA and CHFFA resolutions, the language refers to the opinion of counsel is the Authority counsel.

Ms. Liebert stated the language could be amended for clarification.

Ms. Smith (STO Counsel) responded the same issue came up the first time the resolution came before the Board and consulting with the Attorney General's Office has been Authority policy. Ms. Smith stated there is a fine line between a merger and an acquisition, and there are questions of what qualifies and what does not. Ms. Smith stated the Authorities have been very conservative in using the resolution this past year and if the documents are simple and more of a formality, staff would handle it under the delegation resolution, but if the issue was complicated, like a dissolution or a bankruptcy, or a controversial acquisition, counsel would advise staff to present the item to the Board.

Ms. Sousa (CHFFA Member) commented she does not object to the resolution, but pointed out exercising of your judgment is not what the resolution is requiring.

Ms. Bilaver from the Attorney General's Office (AG) clarified counsel to the Authority, under the CEFA Act, is the Attorney General's Office, but CHFFA's Act does not have a select provision.

Chairperson Wynne stated the Boards should amend Section 15 to clarify the counsel to the Authority, for purposes of this delegation resolution, is the Attorney General's Office.

Chairperson Wynne asked for the Board's preference in regards to Section 7 and asked if the field was too broad, and if the Board was satisfied with the reporting requirements of once a month and a review in a year.

Ms. Bilaver (AG) clarified there are provisions in every loan agreement that has conditions that must be met if a borrower is seeking approval as outlined in Section 7. Ms. Bilaver stated these conditions are included to protect the security of the bond and the transaction. Ms. Bilaver stated a private entity can do what is needed for business reasons, but it has to be done in compliance with the bond documents.

Chairperson Wynne motioned to approve an amendment clarifying Section 15, for both CEFA and CHFFA, and to leave Section 7 alone to review it in a year.

Mr. Hiber (CEFA Member) asked for clarification on how the information would be reported to the Board.

Mr. Washington replied any actions taken under delegation authority would be reported to the Board as an information item the following month. Mr. Washington stated Section 14 of the CEFA resolution states any actions would be reported no less frequently than quarterly. However, Mr. Washington stated staff would present the information on a monthly basis to the Board as the events occur.

Mr. Hiber (CEFA Member) said his interest was to make sure there is a clear understanding of the delegation and when the delegation was exercised. Also, he would prefer more frequent reporting than quarterly. Mr. Hiber recommended the report to be in writing and reported monthly or at the following scheduled meeting. Mr. Hiber said the policy has been explained but the policy is not outlined in the resolution.

Chairperson Wynne replied the CEFA delegation had been exercised twice over the last year and it was reported in the Executive Director's report. Chairperson Wynne clarified Mr. Hiber asked for the information to be in writing.

Mr. Hiber (CEFA Member) replied he would like the report in writing.

Chairperson Wynne said her issue with monthly reporting was the meetings are sometimes postponed. If there is no pending business, she would not call the Board together to provide a report because of requirements under this resolution.

Mr. Joseph (CHFFA Member) proposed language that reflected the information be reported at the next scheduled meeting instead of monthly.

Mr. Washington replied he would make the change to the CEFA delegation resolution so it would be consistent with CHFFA's.

Ms. Sousa (CHFFA Member) stated the language is not in the CHFFA delegation either and asked for the language to be added to Section 14, changing the language from on "a monthly basis" and adding "or at the regularly scheduled meeting".

Chairperson Wynne directed staff to amend Section 14 of the delegation resolutions for both CEFA and CHFFA, adding "or at the regularly scheduled meeting".

Ms. Liebert clarified for the record that an earlier resolution did not have a sunset date for CHFFA but was re-circulated with a sunset date of January 31, 2011. Ms. Liebert also clarified the CHFFA staff report had an incorrect date on page 2. It should be February 20, 2010.

Chairperson Wynne asked for a motion from both CEFA and CHFFA to amend Section 14, adding “or at the regularly scheduled meeting” and to amend Section 15, clarify counsel to the Authority, for purposes of this delegation resolution, is the Attorney General’s Office.

Mr. Jackson (CEFA Member) moved for adoption of the Resolution 2009-05 (CEFA) and Ms. Ingenito (CEFA member) seconded the motion. The motion was adopted as amended with a 4-0 roll call vote.

Ms. Sousa (CHFFA Member) moved for adoption of the Resolution 2009-11 (CHFFA) and Ms. Holton-Hodson (CHFFA Member) seconded the motion. The motion was adopted as amended with a 9-0 roll call vote.

Chairperson Wynne asked for a motion to move CHFFA Item #13 out of order. Ms. Holton-Hodson (CHFFA Member) moved the motion and it was seconded by Ms. Sousa (CHFFA Member). The motion was passed with a 9-0 roll call vote.

Item #13, Scripps Health, Resolution No. 349 of the CHFFA Agenda was presented to the CHFFA Board. After CHFFA Board decision, the Resolution was passed.

Item #10 **Update on Working Group Progress regarding CEFA & CHFFA Bond Guidelines (Held Jointly with CHFFA)**

Ms. Liebert stated a working group was formed. It was composed of CEFA and CHFFA staff, representatives from the Attorney General’s Office, STO Counsel, Public Financial Management (Financial Advisor for CEFA/CHFFA), Sidley Austin LLP, and Orrick, Herington & Sutcliffe LLP. Ms. Liebert reported the working group’s primary focus has been evaluating whether the tax-exempt bond issuance guidelines originally adopted should be amended to reflect changes in the current market conditions. Ms. Liebert noted there have been a growing number of requests for exceptions to the guidelines and requested direction from the Board. Ms. Liebert introduced members of the working group who would be presenting before the Board: Ms. Diane Potter, Esq., Orrick, Herrington & Sutcliffe, Mr. John Bonow, Public Financial Management, and Ms. Julia Bilaver, Deputy Attorney General from the Department of Justice.

Ms. Bilaver, Deputy Attorney General, reported on the existing statutory requirements for tax-exempt bond issuance. Ms. Bilaver stated as Issuer’s Counsel, it is their responsibility to ensure the statutory requirements are met and deliver a standard opinion at the closing of the transaction.

Ms. Bilaver said her responsibility includes verifying the following: both the applicant and the project meet the definitions of the Act; there is an authorized resolution approved by the Board; has a maximum maturity term, (40 yrs for CEFA, 50 yrs for CHFFA); participation by the State Treasurer as Agent for Sale; and, the new money transactions demonstrate compliance with the CEQA requirements. In addition to those requirements, Ms. Bilaver stated a financial eligibility review is required. Both CEFA and CHFFA must establish financial eligibility standards by studying the credit worthiness and earning capacity of each project together with the amount of pledged revenue, debt service coverage and basic security. Ms. Bilaver said occasionally the projects do not meet those standards and are brought before the Board for consideration.

Chairperson Wynne asked Ms. Bilaver if there is something that should be done to build a record when the Authority deviates from the guidelines and create exceptions.

Ms. Bilaver responded the working group is still looking at this issue. Ms. Bilaver stated her responsibility includes making sure the guidelines are not mentioned in the resolution because exceptions need to be made on a discretionary case-by-case basis.

Mr. Bonow, Managing Director, Public Financial Management, talked briefly about the ratings of the Authorities' top borrowers; statewide and national default rates in the health and education sectors; what has become of the credit enhancement market; and his recommendations for how the Boards may wish to measure creditworthiness of prospective borrowers.

Ms. Holton-Hodson, (CHFFA Member) asked if we were being a little premature on changing our guidelines or should we wait until we know what the market is going to provide in order to make our guidelines flexible enough for the new products. Ms. Holton-Hodson said we know what we can not rely on but what we need to know what can be relied on that is solid.

Mr. Bonow responded we need to focus on the market and provide good disclosure. Mr. Bonow felt this was not premature and the ratings do not say whether the bonds are insured or uninsured, but the bonds are credit worthy and investment grade.

Ms. Potter, Esq., Bond Counsel of Orrick, Herrington and Sutcliffe, discussed the importance of disclosure and risk mitigation and how best to satisfy those concerns at the time of bond sale and thereafter.

Chairperson Wynne asked Ms. Liebert if she had direction to proceed or if there were specific questions she had for the Board Members.

Ms. Liebert replied she could proceed.

Ms. Frank (CHFA Member) stated we also need to review our due diligence obligation because of the changes in bond insurance and rating agencies.

Ms. Potter said the Authority Members may want to spend more time reviewing the actual disclosure requirements of each transaction. Ms. Potter said the Official Statement of a transaction is a public offering document to investors that discloses the risk factors and outlines the detail of the borrower, including audited financial statements. Ms. Potter said the Loan Agreement is another document that outlines, in detail, the financial covenants throughout the life of the bond.

Ms. Sousa (CHFFA Member) suggested the working group return to the Board with a proposal to the guidelines and as a group, reviews each item.

Ms. Holton-Hodson (CHFFA Member) stated she feels we should trust the experts and would like the working group to bring back the recommendations.

Mr. Buckhorn (CHFFA Member) recommended reviewing issues the Board has made allowances and exceptions for in the past because they are reoccurring. Mr. Buckhorn said his preference was to stay with investment grade and also, he wants to be cognizant of the Authority's goal to provide low cost financing to hospitals.

Chairperson Wynne added we should look at the projects that were not brought before the Board because there were issues within the guidelines that the borrowers did not like and consequently, secured financing elsewhere.

Mr. Bistrin (CHFFA Member) noted he would like to see the staff reports presented in a way that is more clear and easier to read.

Ms. Liebert said the working group would bring recommendations to the Board and work through them with the Board.

Chairperson Wynne commented it is unanimous for the working group to bring back recommendations for discussion.

With no public comment for CEFA, the meeting was adjourned at 3:00 p.m.

Respectfully submitted,
Ronald L. Washington
Executive Director