



**GOVERNING BOARD AGENDA ITEM
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

DATE OF MEETING: June 19, 2012

TITLE: **Study of Proposed New Policy Regarding Compliance with Building Codes and Optional Submission of New Projects to Local Permitting**

BACKGROUND: Arizona law has long and naturally required that public buildings be constructed in compliance with the state fire code. If the local jurisdiction (city, town, county or fire district) in which the public building is located adopts its own fire code, it is that local fire code that must be adhered to. See, A.R.S, § 34-461. (Any such local code has to be at least as protective as the state's code).

The statute cited above also requires that any public building be constructed in compliance with applicable building, plumbing, electrical, fire prevention and mechanical codes adopted by the local jurisdiction in which the building is located. Notably, however, the statute additionally stipulates that state owned buildings and community colleges are exempt from local building codes, regulations and fees, except for the application of the state fire code in effect where a state owned building is located.

The exemption from local codes for state buildings is not as significant as it might at first appear. The state is typically not subject to regulation by its own creatures of statute, just as the United States Government may not be made subject to the regulation of the individual states. The exemption of the state from local building codes comports with this common law principle of sovereign immunity.

Sometimes, this concept also applies to school districts. For example, as political subdivisions of the State with the authority and responsibility to perform a governmental function, school districts are not subject to local zoning requirements. See, City of Scottsdale v. Municipal Court, 90 Ariz. 393, 368 P.2d 637 (Ariz. 1962); Ariz. Att'y Gen. Op. 190-018 (local road surfacing ordinances not applicable on school district property). However, because political subdivisions are creatures of the legislature and statute, school districts have been historically subject to local building codes and regulations as the legislature commanded by A.R.S, § 34-461.

A.R.S. § 34-461 has also specified that the owner of a public building being constructed is subject to the same local building (permit) fees required of other persons and made the public buildings subject to inspection during construction to determine compliance of the structure with applicable codes.

As the Governing Board knows, permitting fees can be substantial. It is not uncommon with a school project of any significant size in fact for the permit fees to be six figures. With schools now lacking state funding for new construction and building renewal, as well as the relative current restraints on bonds, the cost for permitting can represent a significant burden for limited school construction budgets.

During the 2012 legislative session, the Arizona Legislature recognized and addressed this issue. House Bill (HB) 2561 made substantial changes to A.R.S. § 34-461. The bill:

1. Exempted public school district owned buildings in Pima County¹ specifically from the local building permitting process *and fees* except for:
 - a) the application of the design; and
 - b) the permitting process and any fee required of a fire code in effect where a public school district owned building is located.
2. Now allows school districts in Pima County to choose whether to submit a project to the appropriate local government entity, and if the district chooses to do so, provides that by doing so the district is subject to:
 - a) applicable state and local codes; and
 - b) the permit and code compliance requirements of the local government entity, including required inspections and fees payments.
3. Requires school districts in Pima County to adopt policies which provide requirements to be followed by licensed or registered contractors or employees; such policies are required to:
 - a) include the method by which the public school district will notify the local government unit or units that they will not be using the permitting process, as allowed in statute;
 - b) prohibit a construction contractor from serving as a district's inspector and code compliance official on the same project for which the contractor is providing construction services;
 - c) require the architect of record for a given project to be responsible for signing the certificate of occupancy when a certificate is required.
4. Requires an applicable district to complete and maintain records required by code or law.

¹ The statute does not refer to Pima County specifically, but rather to “a county with a population of more than seven hundred fifty thousand persons but less than two million persons”, a status which only Pima County currently qualifies for. Court rulings preclude laws that contain a preference for specific counties to the exclusion of others. What has been permissible thus far are population based distinctions such as this, because they do not bar other counties from becoming eligible for the protection or preference under the law – assuming, of course, that the county's population can grow or dwindle to the size required for qualification under the law.

In order to comply with this statute, the District Governing Board must review and adopt a policy as the statute describes. The administration has drafted a policy that will comply with the statute.

The draft presented by the administration through this item would state an intention of the District to opt out of the process of applying for and obtaining building permits. However, this election to opt out will not alter the District's continuing obligation to nonetheless meet applicable building codes. But, rather than determining compliance with building codes through the permitting and inspection process offered by local jurisdictions, the District would utilize an architect, engineer, or qualified district employee to inspect the work.

Notably, such election to opt out would not be absolute under the proposed policy. It is drafted to permit the administration to elect access the service of compliance inspections available through the permitting process.

The proposed policy would meet all requirements of the statute set forth above.

RECOMMENDATION:

This item is presented for the Governing Board's first study at this time. In compliance with the procedures set forth by Policy BGB, this item will return to the Board for a second review in the future and potential adoption at that time.

INITIATED BY:



Todd A. Jaeger, Associate to the Superintendent

Date: June 13, 2012



Vicki Balentine, Ph.D., Superintendent

**Compliance of District Construction Projects
with Applicable Codes and Regulations**

The construction of new District facilities, as well as improvements to existing District facilities, shall be in compliance with the state fire code unless a fire code has been adopted by the city, town, county or fire district in which the building is located. In addition, all district facilities and improvements to the same shall be constructed in compliance with all current and applicable building, plumbing, electrical, fire prevention, and mechanical codes adopted by the city, town, county or fire district in which the facility is located. In addition, all state and federal laws and regulations shall be followed, including, but not limited to, laws and regulations requiring access to educational facilities by persons with disabilities.

To ensure compliance with applicable codes or regulations, all design and construction of District facilities shall be made under the direction and supervision of a qualified architect or engineer, as appropriate, and all construction services shall be provided by qualified contractors. The Superintendent shall specify the qualifications required for architects, engineers and contractors as those services are procured. Such qualifications shall include, at a minimum, the registration and good standing of architects and engineers with the Arizona Board of Technical Registration and the registration and good standing of contractors with the Arizona Registrar of Contractors.

Pursuant to A.R.S. 34-461, in order to ensure compliance with applicable codes, the Superintendent shall determine whether to submit any district construction project to the building permit and inspection process of the appropriate local jurisdiction(s) or to instead procure the services of a private code compliance inspector. If the Superintendent determines to submit any District construction project to the building permit and inspection process of any local jurisdiction(s), the District shall pay all appropriate fees and comply with all inspection requirements. If the Superintendent determines to procure the services of a private code compliance inspector, the following shall be observed:

- The Superintendent shall, by certified U.S. Mail, notify the local applicable jurisdiction(s) of the district's determination not to utilize the jurisdiction's permitting process and to use, instead, private code compliance inspection services for the particular construction project.
- The contractor providing construction services on a District project is prohibited from serving as the private code compliance inspector on the same District construction project. Nothing in this provision, however, shall be construed to excuse the contractor providing construction services from that contractor's independent and continuing obligation to construct the project in completed conformity with applicable codes.
- The architect for a District project shall be responsible for signing and providing the certificate of occupancy for the project whenever such a certificate is required for the particular project.
- The Superintendent shall permanently maintain in the records of the District all documents provided by architects, engineers and private code compliance inspectors memorializing or relating to the certificate of occupancy and the conduct of the inspections for District projects. The Superintendent shall require all project architects, engineers and private code

compliance inspectors to provide these documents as a condition precedent for payment of contract retention amounts.

Fire Code Compliance

Notwithstanding any other provision in this or other policy, the District shall seek and obtain all appropriate permits from the local or state office having jurisdiction for the fire code applicable to any District project. In addition, the District shall pay any appropriate fees required by that jurisdiction.