

John

**BOND OVERSIGHT
COMMITTEES
ROLES, RESPONSIBILITIES AND
REGULATIONS**

John Nibbelin, Office of the San Mateo County Counsel

Prior to Proposition 39

- While statewide bond measures required a simple majority to pass, voter approval threshold for all local bond measures was $\frac{2}{3}$
- Oversight of bond fund expenditures was vested in school boards
- Electoral threshold was hard to reach in some jurisdictions, and some bond measures failed, resulting in dilapidated school facilities in some cases
- From 1986 through 1999, 450 school districts sponsored 731 general obligation bond elections, 54% of which passed.

What Proposition 39 Did

- ❑ Passed as a state ballot initiative on November 7, 2000
- ❑ Amended Article XVIII A of the California Constitution to allow for the levy of *ad valorem* taxes on real property in excess of the Proposition 13 one percent (1%) limit to pay debt service on bonds issued for school construction with the approval of 55% of the votes cast
- ❑ In effect, allows school districts and community college districts the option to determine whether to issue general obligation bonds on voter approval of 55%, or 67%
- ❑ Bond measures proposed as 55% measures, however, contain limits on the amount on indebtedness and require special oversight provisions

Effect

- Hundreds of successful Proposition 39 (55% voter approval) General Obligation Bond Elections and School Facility Improvement District elections since 2001
- Approximately 80% of local school bond ballots that rely on the 55% approval have succeeded
- School Services of California reports that 89 out of 113 school bond measures passed on November 4, 2014
- These elections resulted in the formation of hundreds of Bond Oversight Committees (BOCs) statewide

Establishment of BOCs

- If a bond measure authorized pursuant to Proposition 39 is approved, “the governing board of the school district or community college shall establish and appoint members to an independent citizens’ oversight committee, pursuant to Section 15282, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.” Cal. Educ. Code § 15278(a) (emphasis added).

Composition of BOCs

- Shall consist of **at least seven members**
 - One member “active in a business organization”
 - One member “active in a senior citizens’ organization”
 - One member “active in a bona fide taxpayers’ organization”
 - For a school district, one member shall be a parent or guardian of an enrolled child; for a community college district, one member shall be a student.
 - If the specially reserved seats cannot be filled by volunteers, they remain vacant until a qualifying volunteer is found, but count toward the seven members
 - No employees or officials of the district; no vendors, contractors or consultants for the district
- Term of two years; no more than two consecutive terms

“Shalls” of BOCs (What BOCs must do)

- “The purpose of the citizens’ oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens’ oversight committee shall actively review and report on the proper expenditure of taxpayers’ money for school construction. The citizens’ oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.” Cal. Educ. Code § 15278(b) (emphasis added).

Active Verbs From Law

- inform*
- review*
- report*
- advise*
- Not:** approve, consent, authorize, endorse, deny, or reject


Compliance with What Requirements?

- Bonded indebtedness incurred by a school district, community college district, or county office of education
- For the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities,
- Approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph.
- 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:

Compliance with What Requirements?

- ❑ (A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.
- ❑ (B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.
- ❑ (C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.
- ❑ (D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.
- ❑ (E) A requirement that the school district board provide the citizens oversight committee with responses to all findings and recommendations and concerns addressed in the required annual, independent financial and performance audits within three months of receiving the audits.

“Shalls” of BOCs

- “All committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the district governing board. 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 website  maintained by the governing board.” Cal. Educ. Code § 15280(b).

“Shall”: Bottom Line

- BOCs are supposed to “inform the public” and “advise the public” whether proceeds from 55% bonds are being used “for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities” and not for “other school operating expenses.”
- Whether a particular expense is authorized by Article XIII A of the state constitution, and by the applicable ballot measure, is a question for your **district’s bond counsel.**
- The propriety of an expenditure has ripple effects, including the tax status of the bonds, and the district should get an opinion from its counsel to avoid costly litigation over whether the bonds are entitled to federal tax exempt status!

“Mays” of BOCs (what BOCs may do)

- “In furtherance of its purpose, the citizens’ oversight committee may engage in any of the following activities:
 - (1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
 - (2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.”
- Your district is already required by the state constitution to do annual independent performance and financial audits, which overlap substantially with your work. You **may** choose to review these audits in connection with your work, but you are not required to do so.

“Mays” of BOCs (what BOCs may do)

- ▣ “(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.”
 - You may choose to inspect school facilities and grounds, although you are not required to do so.
- ▣ “(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.”
 - You may choose to review your school’s deferred maintenance plan, although you are not required to do so.

“Mays” of BOCs (what BOCs may do)

- “(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:
 - (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 schoolsite design.
 - (E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.”
- You may choose to review cost-saving measures, although you are not required to do so.

Exclusively An Oversight Role

- BOC shall not take part in operating a District bond program.
- Thus, for example:
 - BOCs have no role in the school district's actual bond sale and insurance process, or make decisions re: the timing, terms or structure of bond insurance;
 - BOCs do not select, or participate, in the negotiation or bid process for contractors or consultants for bond projects;
 - While BOCs may visit construction sites, they do not visit construction sites or construction projects without prior permission of the school district's superintendent (who have the authority to determine frequency and timing of visits.);
 - BOC may not contact school district contractors or consultants without prior permission of the superintendent.

The District's Obligations

- “The governing board of the district shall, **without expending bond funds**, provide the citizens’ oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens’ oversight committee.” Cal. Educ. Code § 15280(a).
- The district must also provide the BOC with responses to all findings and recommendations and concerns addressed in the required annual, independent financial and performance audits within three months of receiving the audits.
- “Necessary technical assistance” includes, at a minimum, making provision to publicize BOC reports (e.g., by posting them on the district’s website).
- “Without expending bond funds” means that all administrative costs incurred come out of the district’s operating budget, and impact delivery of educational services to students.

Your Compliance: Form 700

- ❑ Certain public offices require the filing of disclosure statements of your financial interests (“Form 700”)
- ❑ Filed Form 700s are public documents open to inspection upon demand
- ❑ Non-compliance with your district’s instructions about the timely filing of your Form 700 disclosure statements may constitute a criminal violation, so take the deadlines seriously
- ❑ Forms must be filed upon taking office, and upon leaving office, so don’t assume you can resign your position to avoid filing a disclosure form!

Your Compliance: Gov. Code § 1090

- There is a general prohibition on being involved in the making of contracts in which you have a financial interest.
- Whether you have a financial interest under Section 1090 is very complicated and not always easily resolved through the use of common-sense.
- If you believe there is a financial benefit or detriment to any school district contract that comes before you for review, advise the Superintendent prior to any meetings to discuss it – it may be necessary for you to resign to avoid violation of Section 1090!

Your Compliance: Brown Act

- ❑ Your meetings must be conducted in public.
- ❑ In public means:
 - ❑ Your meetings must be held in an open room
 - ❑ An agenda of your business must be posted either 72 or 24 hours in advance of your meeting
 - ❑ You must allow members of the public a reasonable time to address you on matters within your jurisdiction
 - ❑ You must not discuss matters not appearing on the agenda
 - ❑ Very restrictive rules control whether a new matter can be added to the agenda after it has been posted

Your Compliance: Brown Act

- Your meetings must not be held in private
- In private means:
 - ▣ No “off-line” meetings of a quorum
 - ▣ No serial meetings eventually involving a quorum
 - ▣ No “message carrying” (“Please tell X I said . . .”)
 - ▣ No online discussions eventually involving a quorum

Your Compliance: Brown Act

- How to Comply with the Brown Act:
 - Save your thoughts for a public meeting
 - Follow the advice of staff before interacting in any way with your fellow BOC members about school district business
 - You can still talk to your elected school board members about concerns, but don't claim to be speaking for the BOC

Additional Resources

- School District staff
- Your school district's general counsel
- Institute for Local Government (www.ca-ilg.org)
- California League of Bond Oversight Committees (www.CALBOC.org)