

ATTACHMENT 2

GENERAL OBLIGATION BONDS AND PROPOSITION 39 (55% LOCAL VOTE BONDS)

CITIZENS OVERSIGHT COMMITTEES REQUIREMENTS AND GUIDELINES

by

Bowie, Arneson, Wiles & Giannone

1. BACKGROUND

On November 7, 2000, California voters approved Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act (School Facilities; 55% Local Vote; Bonds, Taxes; Accountability Requirements). Within the text of Proposition 39 various accountability requirements, including requirements for certain types of audits, were specifically required. In an effort to increase voter acceptance for Proposition 39, the California Legislature passed, and Governor Davis signed, Assembly Bill 1908 (“AB 1908”), which provided additional requirements relative to school district general obligation bond elections conducted pursuant to Proposition 39. Those requirements included provisions for school districts* conducting Proposition 39 elections and thereafter establishing and appointing members to a Citizens Oversight Committee (“Committee” or “Citizens Oversight Committee”), as required by Education Code Section 15278, *et seq.* as put into place pursuant to AB 1908, are discussed herein.

* In general the stated requirements apply in the same manner to community college districts.

2. LEGAL REQUIREMENTS

The provisions of AB 1908, largely contained in Education Code Sections 15278, *et seq.*, provide specific legal requirements relative to Citizens Oversight Committees. These legal requirements include the purpose of the Committee, the establishment and appointment of members to the Committee, authorized activities of the Committee, membership on the Committee meeting and procedural requirements applicable to such Committee and limitations and requirements relative to school district support of the Committee. Each of these matters is discussed below. We have also included a discussion relative to recommended actions to be taken by the school district concerned relative to Citizens Oversight Committees.

It should be noted that the requirements relating to Citizens Oversight Committees are only applicable to general obligation bond measures which are called pursuant to the provisions of Proposition 39 and the related legislation. These specific legal requirements are not applicable to general obligation bond measures called pursuant to the previously existing statutes (66-2/3% favorable voting requirement) although the school district calling such a general obligation bond measure may wish to reference a citizens committee and form a citizens committee under such requirements and guidelines as the school district shall direct.

3. PURPOSE OF THE COMMITTEE

_____As stated by AB 1908, the purpose of the Committee shall be to inform the public at least annually in a written report concerning the expenditure of the bond proceeds. In carrying out this purpose the Committee shall:

- (a) Actively review and report on the proper expenditure of taxpayers' money for school construction;
- (b) Advise the public as to whether the school district is in compliance with the requirements of Article XIII A, Section 1(b)(3) of the California Constitution, which provides that:
 - (i) Bond funds are expended only 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;

- (ii) No bond funds are used for any teacher or administrative salaries or other school operating expenses;
- (iii) A list of projects to be funded was included on the ballot;
- (iv) An annual independent performance audit is performed; and
- (v) An annual independent financial audit is performed.

4. COMMITTEE APPOINTMENT AND MEMBERSHIP

Education Code Section 15278(a) requires that if the bond measure called pursuant to Proposition 39 and the related legislation is successful, the committee must be established, and the initial members of the committee must be established within sixty (60) days after the date that the governing board of the school district enters the results of the bond election on its minutes.¹ The governing board of the school district also appoints the members of the Committee. The governing board of the school district may also adopt policies, guidelines and procedures to be applicable to the Committee once it is established. We recommend that the policies, guidelines and procedures be adopted before the members of the Committee are selected.

The Committee shall consist of at least seven (7) members (and may be larger) to serve for a term of two (2) years, without compensation, and for no more than two (2) consecutive terms. The Committee may not include any employer or official of the school district or any vendor, contractor, or consultant of the school district. The Committee must include all of the following:

¹ Following the bond election date for a Proposition 39 general obligation bond election, the County Registrar of Voters will provide the school district calling the election with the formal results of the election in the form of a Certificate of Election Results. The governing board of the school district is to enter the results of such election into its minutes and to certify such proceedings to the County Superintendent of Schools (this is normally done in the form of a resolution adopted by the governing board of the school district concerned). That resolution should be promptly provided to the County Superintendent of Schools. This action is normally taken at the next regular meeting of the governing board of the school district after the certification of election results is received. This action must occur before the issuance and sale of the authorized bonds and can be approved by the school district's governing board.

- (a) One member who is active in a business organization representing the business community located within the school district;
- (b) One member active in a senior citizen's organization;
- (c) One member active in a bona fide taxpayer association;
- (d) For a school district, one member shall be the parent or guardian of a child enrolled in the district. For a community college district, one member shall be a student who is both currently enrolled in the district and active in a community college group, such as student government. The community college student member may, at the discretion of the board, serve up to six months after his or her graduation; and
- (e) For a school district, one member shall be 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 schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

As to whether a single individual may fill more than one of the five membership requirements set forth above, there is not unanimity of opinion. On the one hand it may be argued that the legislation indicates at least five different members to encourage different viewpoints. On the other hand, and particularly in smaller communities where citizens available to serve on a Committee may be limited, there is a viewpoint that believes that a single individual can represent more than one of the five requirements, for example, an individual who is both active in a senior citizens organization and also active in a bona fide taxpayer association. Individual school districts should consult with their bond counsel relative to selecting members for the Citizens Oversight Committee once they pass a general obligation bond measure pursuant to the provisions of Proposition 39 and the related legislation.

Members of the Committee are expressly subject to the requirements and limitations of Government Code Section 1090, *et seq.* (which prohibits involvement in public agency contracts) and Government Code Section 1125, *et seq.* (which

prohibits incompatible public offices). It may be desirable to provide copies of the statutory provisions to members of the Committee and to incorporate them within the Committee guidelines or policy.

5. *ACTIVITIES OF THE COMMITTEE*

The Committee may engage in any of the following activities in furtherance of its purpose:

- (a) Receive and review copies of the annual performance audit (as prepared pursuant to the requirements of Proposition 39);
- (b) Receive and review copies of the annual financial audit (as prepared pursuant to the requirements of Proposition 39);
- (c) Inspect school facilities and grounds to insure that bond funds are expended for the purposes set forth in the bond measure approved by the voters;
- (d) Receive and review copies of any deferred maintenance proposal or plans developed by the school district;
- (e) Review efforts by the school district to maximize bond revenues by implementing cost-saving measures, including, but not limited to:
 - (i) Mechanisms designed to reduce the cost of professional fees;
 - (ii) Mechanisms designed to reduce the costs of site preparation;
 - (iii) Recommendations regarding the joint use of core facilities;
 - (iv) Mechanisms designed to reduce costs by incorporating efficiencies in school site design; and
 - (v) Recommendations regarding the use of cost-effective and efficient reusable plans.

- (f) The Committee shall issue regular reports of the results of its activities. The Committee must issue at least one report each year.

6. MEETING PROCEDURES OF THE COMMITTEE

- (a) Regular meeting dates, time, and place shall be established by the Committee and published/posted in accordance with the Ralph M. Brown Act and applicable school district procedures. All Committee proceedings shall be open to the public and shall be subject to the provisions of the Ralph M. Brown Act (the same statutes that govern school district governing board meetings); and
- (b) All documents received by the Committee and reports issued by the Committee shall be a matter of public record.

7. DISTRICT SUPPORT OF THE COMMITTEE

The governing board of the school district, without any use of bond funds, must provide the Committee with:

- (a) Any necessary technical assistance and administrative assistance in furtherance of the Committee's purpose; and
- (b) Sufficient resources to publicize the conclusions of the Committee (including establishing, operating and updating the Committee Internet Website).

8. COMMITTEE INTERNET WEBSITE

Education Code Section 15280(b) requires that certain documents relating to the Committee be made available on an internet website maintained by the school district. The cost to operate, maintain and update the internet website are the responsibility of the school district. The website may be included within an existing website operated by the school district or may be operated separately. The following documents and information must appear on the Committee internet website:

- (a) Minutes of Committee meetings;

- (b) Reports issued by the Committee; and
- (c) Documents received by the Committee.

9. RECOMMENDED GUIDELINES PROVISIONS

Although not specifically required by law, the governing board of the school district should seriously consider the adoption of guidelines or policies applicable to the Committee and Committee activities. The guidelines or policies cannot limit the statutorily required authority or required actions of the Committee, but can provide for guidance and operational parameters for the Committee. The following are types of provisions and requirements that should be considered by the school district for inclusion in such guidelines or policies:

- (a) The Committee should provide for minutes of its meetings to be taken. Minutes of such meetings are a matter of public record and must be posted on the Committee Internet Website (as further described in paragraph 8).
- (b) Regular attendance by Committee members is essential to effective operation of the Committee and timely implementation of bond projects. If a Committee member is unable to attend regularly scheduled meetings, the school district's governing board may appoint a replacement for that member on recommendation of the school district's superintendent. After a Committee member has had a certain number (for example, 2) consecutive absences without reasonable excuses, the Committee should recommend that the school district's governing board remove the member from the panel and seek a replacement. The replacement member must represent the required Committee membership background, as shall be applicable. The guidelines should cover the notification and replacement of a Committee member under these, and potentially other, circumstances;
- (c) Committee actions and decisions should be made and recorded as individual votes, noting the Committee member's name and vote on a particular matter. Committee decisions should be by majority vote of the members of the Committee present, provided that there is a quorum.

- (d) Parents, community members, and news media representatives should be encouraged to attend Committee meetings. When individual schools are placed on the Committee meeting agenda, those schools' parent groups should be notified and encouraged to attend. Posting and dissemination of notice of the meetings of the Committee should be covered in the guidelines.
- (e) Members of the public attending Committee meetings shall have an opportunity to address the Committee (this is required under the Brown Act). Notice of Committee meetings should be identified at school district governing board meetings and at school site council meetings, and may be provided by other means (such as newsletters).
- (f) Reports by the Committee shall be presented to the school district governing board at its meetings.
- (g) The relevant education codes do not provide that a Committee has the authority to override, or veto, any school district determination to expend bond funds in a particular manner.* It may be desirable to make clear what authority the Committee does, and does not, have with regard to bond fund expenditures.
- (h) The guidelines or policy should specify what expenses and costs will be absorbed by the school district in its provision of technical and administrative assistance and publicizing Committee reports and conclusions. Matters for consideration should include, but would not necessarily be limited to:
 - (i) Providing the Committee with meeting location(s) and facilities;
 - (ii) Providing for Committee meeting agendas, materials, requested information, informational reports and Committee meeting minutes;

* However, it should be noted that there are statutory provisions dealing with legal actions to prohibit the expenditure of bond funds for projects not approved by the voters as part of the corresponding bond measure.

- (iii) Presentation of information on the Committee Internet Website and by other means, such as newsletters, etc.;
 - (iv) Maintaining Committee records and files;
 - (v) Completing and transmitting correspondence on behalf of the Committee; and
 - (vi) Responding to informational requests from the Committee or its individual members.
- (i) Currently there is a question pending as to whether members of a Citizens Oversight Committee are subject to the provisions of the Political Reform Act of 1974 and the conflict of interest rules relative to public officials promulgated by the Fair Political Practices Commission (FPPC). This question has been forwarded to the office of the general counsel of the FPPC. Pending a definitive opinion, or legislation on this issue, our firm recommends that members of the Committee be treated as “public officials” as defined in California Government Code Section 82048 and that members of a Committee be required to file annual Statements of Economic Interests as required under State law and FPPC guidelines. School district guidelines or policies dealing with a Citizens Oversight Committee should include statements relative to compliance with conflict of interest requirements and annual filing of Statements of Economic Interests subject to future opinions and rulings by the FPPC or legislation dealing with this matter.

If you have any question about the matters discussed herein or about bond elections generally, please contact Alex Bowie, Robert E. Anslow or Julia Rice at our offices.

The applicability of the legal matters discussed may differ substantially in individual situations. The foregoing information has been prepared by Bowie, Arneson, Wiles & Giannone as an overview of the subjects discussed and should not be construed as individual legal advice.