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CITIZENS' OVERSIGHT OF PROPOSITION 39 GENERAL OBLIGATION BONDS

By

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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.

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

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

requirements of Article XIII, 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:

- (a) One member who is active in a business organization representing the business community located within the school district;

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.

- (b) One member active in a senior citizens' 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 schooltime 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 domain operated by the school district or may be operated separately. Questions have arisen concerning whether the Committee internet website must have pages that are entirely separate from the parent school district's home pages and school pages. While the law on this matter is not clear, we suggest that the Committee internet website can operate in the school district's domain, and can be linked to the school district's website and pages, but should be separate (and separately marked to indicate the Committee internet website pages). The Committee has the principal responsibility to direct which documents, other than those listed below, are to be posted on the Committee internet website.

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.

The duration of posting is also not set out in the statutes. However, we suggest that minutes and reports issued by the Committee should remain posted for a minimum of two years. The Committee may adopt regulations setting forth the posting requirements for documents on the Committee internet website. We also suggest that the Committee specify whether minutes are posted as they are drafted, or only once they are adopted and approved by the Committee (we suggest the latter).

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. These types of guidelines can set out expectations for the Committee's actions and provide guidance for the Committee's operations and activities before problems occur.

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 once finalized and approved (unless otherwise directed by the Committee) (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. Some school districts have adopted policies that specify that upon the occurrence of a certain number of unicast absences that a member of the Committee may be found to have vacated their position. 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:

* 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.

- (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;
 - (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.

10. Annual Reports of the Committee

As previously noted, each Committee has as its principal purpose the responsibility to inform the public concerning the expenditure of bond revenues by the school district, see Education Code Section 15278(b). Education Code Section 15280 requires that each Committee issue "regular reports on the results of its activities," and that a report shall be issued at least once per year. The Education Code does not provide whether such annual report must be issued on a calendar or fiscal year, however, the consensus view is that a Committee may elect to do so on either a calendar year or fiscal year basis provided that they are consistent in this timing. It should be noted that the provision of an annual report is not linked to the issuance of bonds authorized pursuant to Proposition 39 and related State Law.

Each Committee may issue reports more frequently than annually, but is required to issue an annual report for each calendar or fiscal year. Committee annual reports are to be posted on the

Committee internet website once they are approved by the Citizens' Oversight Committee, see Education Code Section 15280(b).

Other than a requirement that annual reports cover the results of the Committee's activities, there is no established or mandated form, or other required content, for an annual report. However, we recommend that Committee annual reports include the following:

1. A description of the activities of the Committee during the period covered by the annual report. This can be done by reference to the minutes of the Committee meetings if desired. This can also reference visits to, and inspections of, District schools and other project sites and the construction efforts funded by bond funds authorized by the bond measure
2. Findings of the Committee for the period covered by the annual report, including:
 - A. That the Committee has met on a regular basis in compliance with State law and the school district's Policy (this may be included in 1., above).
 - B. That the Committee has received reports, updates, and information on the expenditure of the bond funds, and reviewed the expenditures made on projects authorized under the bond measure.
 - C. Bond funds have been expended on the identified projects authorized by the bond measure (see Education Code Section 15278(b)(1)).
 - D. No bond measure funds have been spent on teacher/administrator salaries or other school operating expenses (see Education Code Section 15278(b)(2)).
 - E. The annual report would normally include a specific finding that the required annual fiscal audit and performance audit required by the Constitution (collectively the "Audit Reports") have been prepared by the school district and reviewed by the Committee (see discussion under 11. below)
 - F. The Committee has received all necessary and requested technical and administrative assistance from the school district (see Education Code Section 15280).
 - G. The Committee internet website is operating and includes all required documentation and information (see Education Code Section 15280(b)).
 - H. Efforts undertaken by the Committee, if any, relative to review school district efforts on cost-saving measures (see Education Code Section 15278(c)(5)).

- I. The school district is in compliance with the requirements of Article XIII 1(b)(3) of the California Constitution. This finding can be made if the other findings, set forth above, are made.
3. The Committee may elect to specifically cover the basis for the findings that it makes, but is not required to do so. The Committee may make other findings in addition to the ones suggested above as part of its efforts to assure compliance by the District with the statutory and Constitutional requirements of Proposition 39 and the Committee's principal purpose to communicate with the public.
4. The Committee may provide for specific written recommendations concerning the bond funds to the school district governing board or staff.

11. Annual Performance and Financial Audits

State Law:

Proposition 39 was approved by the California voters at the Statewide general election held in November, 2000 ("Proposition 39"). Proposition 39 amended Section 1(b) of Article XIII A the California Constitution to provide that general obligation bonds of school districts, community college districts and county boards of education could be authorized pursuant to a 55% favorable vote, provided that certain conditions were set forth in the subject bond measure. These included the following accountability 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."

[Emphasis added]

State law does not specifically describe the actual requirements or contents of the annual financial audit and performance audit other than as described in the Constitutional provisions set forth above. However, the general purpose of each such audit is described and the audits must be completed on a annual basis and independently of the school district or School Facilities Improvement District that is required to prepare them. The annual audits can be prepared on either a calendar year basis or fiscal year basis. In our experience, most districts which are subject to these requirements have elected to conduct the audits on a fiscal year basis to correspond with the preparation of the school district's general financial audits.

Committees are charged with advising the public that the school district has complied with the annual audit requirements of the Constitution. Committees may review, and the school district shall provide to the Committee, such annual reports when they are prepared, see Education Code Section 15278(c)(1) and (2).

Suggestions as to Annual Audits**:

As noted above, the annual audits must have the following focus:

1. Financial Audit - This audit must be of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects. This audit must be prepared by an independent auditor (or auditing firm), which should have adequate qualifications to complete this task and render a reliable report. The independent auditor should be selected by the school district (although the Committee can be involved in the selection process and may have input as to the audit format). The audit should be addressed to both the school district and the Committee when completed and should be provided to the Committee promptly after completion so that the Committee can evaluate the audit report and make a determination as to the compliance of the District with the applicable Constitutional, the bond measure and any applicable Committee and school district Policy requirements.

2. Performance Audit - This audit is performed to ensure that the bond funds have been expended only on the specific projects listed in the bond measure. This audit must be prepared by an independent auditor (or auditing firm), which should have adequate qualifications to complete this task and render a reliable report. The independent auditor should be selected by the school district (although the Committee can be involved in the selection process and may have input as to the audit format). The audit should be addressed to both the school district and the Committee when completed and should be provided to the Committee promptly after completion so that the Committee can evaluate the audit report and make a determination as to the compliance of the

** The following are suggestions concerning the preparation and contents of the required annual audits referenced above based on our experience with other clients. These suggestions should not be viewed as definitive or completely comprehensive as to this matter. We are aware that different auditing firms have taken different positions as to the preparation and contents of such audits.

District with the applicable Constitutional, the bond measure and any applicable Committee and school district Policy requirements.

The annual audits may both be prepared by the same auditor or auditing firm. This may be the same auditor or auditing firm that prepares a school district's annual financial audit^{***} (or may be a different auditor or auditing firm). If the services of the same auditor(s) are to be utilized, the school district should take steps to assure itself that the auditor(s) concerned have the background and qualifications to conduct and complete such audits in a satisfactory manner. The school district might elect to solicit requests for proposals for these audits. If this is done, we would suggest that the specific requirements desired by the school district for the audit be included in both any request for proposals and in any contract with the auditor(s) for the preparation and completion of the annual audits^{****}.

As to the individual annual audits, we would suggest that they include the following:

1. Financial Audit:

- A. A statement that the financial audit is being undertaken pursuant to Section 1(b)(3)(D) of the Article XIII A of the California Constitution and the time period being covered by the audit.
- B. A clear identification of the bond fund being audited and the bonds, the proceeds of which were deposited into the bond fund concerned.
- C. The starting and ending balances in the bond fund.
- D. An identification of interest earnings to the bond fund.
- E. An identification of the expenditures/withdrawals from the bond fund (which might include a break-down by time period, but this is not required).
- F. A statement, if applicable, that the records for the bond fund are accurate.

2. Performance Audit:

^{***} We are aware that some auditing firms have, or will, present a proposal to conduct the Proposition 39 general obligation bond audits in conjunction with a school district's annual financial audit for a consolidated price. Such proposals would be subject to the suggestions set forth in this memo.

^{****} We might suggest that the school district understand and agree to any limiting conditions which the auditor(s) may apply to such audit(s).

- A. A statement that the financial audit is being undertaken pursuant to Section 1(b)(3)(c) of the Article XIII A of the California Constitution and the time period being covered by the audit.
- B. A clear identification of the bond funds being audited and the bonds, the proceeds of which were deposited into the bond fund concerned.
- C. A brief description of the auditing/sampling method used to conduct the performance audit.
- D. A comparison, or statement of the comparison method, between the expenditures reviewed and the authorized purposes of bond measure funds (the audit may state or incorporate the language of the bond measure itself).
- E. A statement, if applicable, that the expenditure of the funds reviewed conforms to the requirements of the bond measure.

If you have any questions regarding the above, please feel free to contact either Alex Bowie, or Robert Anslow at (949) 851-1300 or (800) 649-0997, fax (949) 851-2014, or via e-mail to abowie@bawg.com or ranslow@bawg.com.

Respectfully,

BOWIE, ARNESON, WILES & GIANNONE

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.