

MEMORANDUM FROM BOND COUNSEL REGARDING CITIZENS' OVERSIGHT COMMITTEE

A successful bond election which is authorized pursuant to the provisions of "Proposition 39" (allowing general obligation bonds to be issued following a 55% vote) requires the establishment of a citizens' oversight committee. This memo will explain when the committee need to be established, who can be a member of the committee, and the functions which the citizens' oversight committee is required to perform in connection with the general obligation bond issue of the District.

District's Reporting Requirements Relating to Bond Program. In order to understand the role of the Committee, it is helpful to start with a discussion of Proposition 39, which amended Article XIII of the California Constitution to permit school districts and community college districts to issue general obligation bonds with a 55% vote. Proposition 39 contains two specific reporting requirements applicable to the District's general obligation program, as follows:

1. "A requirement that the ... district board ... conduct an annual, independent **performance audit** to ensure that the funds have been expended only on the specific projects listed."
2. "A requirement that the district board ... 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 facilities projects."

These audit functions are to be performed by an organization which is independent of the District. These functions are not specifically made the responsibility of the Committee, however, as described below, it is the responsibility of the Committee to review these audits (see below).

The purpose of the **performance audit** is to review what facilities the bond proceeds have been spent on, relative to the description of authorized facilities contained in the ballot measure. The purpose of the **financial audit** is a bit murkier, although we believe it is to review how the bond proceeds have been spent, i.e. the manner in which the expenditure program has been undertaken, including a review of the amount and purpose of individual expenditures.

Timing of Creation of Oversight Committee. The Citizens Oversight Committee must be created within 60 days of the date that the governing board enters the election results on its minutes (Education Code Section 15278).

Make-up of Oversight Committee. The Committee must consist of at least 7 members, 5 of whom must meet the following criteria: 1 member must be an active member of the business community, 1 member shall be active in a senior citizens' organization, 1 member shall be active in a bona fide taxpayers' organization, 1 member shall be a student who is currently enrolled in the district and active in a community college group, such as student government, and 1 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. No employee or officer of the District may serve on the Committee, nor may any vendor, contractor or consultant of the District serve on the Committee. See Section 15282 of the Education Code.

Statutory Duties of the Committee. The implementing legislation (Sections 15278 through 15282 of the Ed. Code) states that the purpose of the Committee is "to inform the public concerning the expenditure of bond revenues." The specific mandatory functions of the Committee are set forth in the Ed. Code as follows:

1. *Actively review and report on the proper expenditure of taxpayers' money for school construction.*
2. *Advise the public as to whether the District is in compliance with Section 1(b)(3) of Article XIII A.*
3. *Convene to provide oversight for both of the following:*
 - (a) *ensuring that bond revenues are expended only for the purposes described in Article XIII A, Section 1(b)(3), and*
 - (b) *ensuring that no funds are used for any teacher or administrative salaries or other school operating expenses.*
4. *Issue regular reports on the results of activities, at least once a year.*

Note that all Committee proceedings must be open to the public following notice given in the same manner as governing board meetings. Minutes of each meeting and all documents received and reports issued must be a matter of public record and be made available on the District's internet web page. See Education Code 15280.

Discussion. In order to discharge its duties, it is clear that the Committee must review the annual performance audit and the annual financial audit which the District is required to provide under Article XIII A as cited above. This review is specifically required in order for the Committee to perform its duties as summarized above.

Presumably, the annual performance audit and the annual financial audit will provide sufficient information for the Committee to discharge its remaining functions as well, since the audits should contain all of the information which the Committee needs to discharge its duties under categories 1 and 3 above. We would recommend that the independent party(ies) undertaking the annual performance audit and the annual financial audit be instructed by the District to ensure that sufficient detail is contained in these reports to enable the Committee to perform its functions described above.

Please do not hesitate to contact me should you have any questions.

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