



A California Public Benefits Corporation  
Corporation formed September 19, 2019

Bond Oversight Done Right

## 12 Board Minutes, Saturday, December 11, 2021

### MINUTES BOARD OF DIRECTORS

Saturday, December 11, 2021 at 10:00 AM via Zoom

## \$180.8 Billion Proposition 39 School Bonds approved by voters <sup>1</sup>

CABOC website: [www.bondoversight.org](http://www.bondoversight.org)

**Purpose Statement:** “The specific purpose of this corporation is to provide training, assistance, and encouragement to California School Proposition 39 Citizens’ Bond Oversight Committee Members through development of training materials, delivery of online training, conferences, workshops, formation of regional groups of California Citizens’ Bond Oversight Committees and representing common interest at the statewide level.” (Articles of Incorporation, Section 4)

**Bond Oversight Done Right: A Sustainable Strategic Plan for the California Association of Bond Oversight Committees (CABOC) recommendations:** Create a succession plan, allocate funding to hire a financial consultant, rework the organizational structure, create training videos, and develop performance measurement. (August 13, 2021)

**To participate remotely using Zoom:** Log into Zoom from your laptop, PC, desktop, or tablet and enter the meeting ID 814 8749 1207, passcode 293000. If you are calling in only, you will also need the meeting phone: 1.669.900.6833, after which you will be prompted for the meeting ID.

Note: Advisors are invited to attend this meeting but are not required to attend.

Please silence your cell phone.

Date: Saturday, December 11, 2021

Time: 10:00 AM

Place: Zoom

Call to Order – Vice President Carolyn Castillo at 10:09 a.m.

Roll Call Directors – Secretary Anton Jungherr

<sup>1</sup> For the period 2001 through 2020. Proposition 39 was approved by the voters in November 2000.



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Name	County	Present	Absent
Carolyn Castillo	Los Angeles	X	
Marcus Crawley	Alameda	X	
Chris Hanson	San Francisco	X	
Jason Hunter	Riverside	X	
Anton Jungherr	Contra Costa	X	
Mac Moore	Contra Costa		X
Thomas Rubin	Alameda	X	
Ourania Riddle	Solano		X
Amadeo Rodriguez	Los Angeles		X
Jack Weir	Contra Costa		X

Sixteen current authorized positions, 10 filled, 6 vacant.

Introduction of Advisors and other participants – Anton Jungherr

Other Participants – Bryan Scott, Fredrick Sykes, Rex Ridgeway, Nancy Rieser, Denise Sheehan,

### ACTION

#### Item 1: Amend Article of Incorporation – Purpose Statement

*Motion: That the Articles of Incorporation Purpose Statement shown below be approved and that it be presented at the January 15, 2022 Annual Membership Meeting for ratification. (7)*

#### <sup>2</sup> **Approved**

"The *California Association of Bond Oversight Committees* is dedicated to the proposition that taxpayers deserve information on proper **school** bond expenditures through facilitation of independent citizens' bond oversight committees in accordance with the passage of Proposition 39 (School Facilities. 55% Local Vote. **Bonds, Taxes. Accountability Requirements.**)

Our ~~purpose~~ **mission** is to develop and deliver support **for thorough oversight through** ~~such~~ as training, newsletters, conferences and workshops; and to represent our collective interests at the statewide level **to benefit all Californians.**"

<sup>2</sup> Page reference to attached page.



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### **Item 2: Election of Carolyn Castillo as CABOC President effective January 1, 2022**

The terms of all Corporate Officers end on January 31, 2022 or until their successors are elected and qualified. Officers are elected for two-year terms. The election of Officers will be on the February 12, 2022 Board Agenda.

*Motion: That effective January 1, 2022 Carolyn Castillo be elected CABOC President for a term ending January 31, 2022 or until her successor is elected and qualified. **Approved***

### **Item 3: Fundraising Appeal December 2021**

*Motion: That the amended fundraising appeal shown below be published in the December 13, 2021 issue of The CABOOC Digest newsletter. (8) **Approved***

Yes! I want to support independent CBOC's with a donation: The California Association of Bond Oversight Committees (CABOC) is dedicated to the proposition that taxpayers deserve information on proper bond expenditures through facilitation of independent citizens' bond oversight committees. Our purpose is to develop and deliver support such as training, newsletters, conference and workshops and to represent our collective interests at the statewide level. During 2021 CABOC sponsored October 16, 2021 statewide conference, published nineteen newsletters, prepare legislation program 2022, developed website and prepared thirty FAQs. We need to raise \$5,000 by December 31, 2021. **Please consider donating at least \$25.** As a nonprofit association we depend on the support of CBOC members, like you, to keep this essential work going. Please donate online at our secure site - Click here to Donate

### **Item 4: Fundraising Plan 2022 – Finance Committee Recommendations**

*Motion: That the following Fundraising Plan 2022, as recommended by the Finance Committee, and amended by the Board, be approved:*

- *Maintain free CABOC memberships.*
- *Consider seeking employment of a financial consultant during 2023.*
- *Do not seek any grants unless we see an opportunity.*
- *Fees for training published on YouTube could be a useful revenue source.*
- *April 2022 and October 2022 conference with flexible formats.*
- *One new Corporate sponsor for April 2022 conference.*
- *Facebook birthday contributions for Board Members and Advisors.*



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- *Recurring monthly \$50 donation, **or whatever is appropriate**, target for CABOC Board Members and Advisors. **Approved as amended (shown in red.)***

### Item 5: Board Retreat January 15, 2022 – Strategic Plan

Gregg Visineau prepared the following three documents, CABOC Strategic Planning Consultant (\$1/month):

- Could CABOC use its own “strategic plan”? (9)
- Is CABOC ready for “strategic planning”? (12)
- Board/Advisors retreat proposal (14)

*Motion: That a Board/Advisors/CBOC Members Zoom Retreat be held on Saturday, January 15, 2022 from 10:30 AM to 1:00 PM, following the 10:00 AM Annual Membership Meeting facilitated by CABOC Strategic Planning Consultant Gregg Visineau. **Approved***

### ACTION CONSENT

All items to be voted on by one motion unless item is removed for a separate vote.

### Item 6: Accept Financial Reports January to November 2021

- Statement of Financial Position as of November 30, 2021 (15)
- Statement of Activity January – November 2021 (16)
- Budget vs. Actuals: January to November 2021 (17)

### Item 7: Approve Minutes, October 9, 2021

The draft minutes were previously distributed to the Board Directors and are on the website.

*Motion: Approve the December 11, 2021 consent items shown above. **Approved***

### DISCUSSION

### Item 8: Committee Reports

This is an opportunity for committee chairs or member to discuss policy issues with the Board of Directors, if any.



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Jason Hunter and Anton Jungherr provided an update on Legislative Committee activities.

### **Item 9: CABOC Advisory Opinions**

Would it be useful for CABOC to issue Advisory Opinions on local CBOC matters?

- Montecito Union School District (Jason Hunter)

The possibility of sending advisory letters to districts that are clearly violating Proposition 39, i.e. spending bond money without an appointed CBOC, will be discussed at a future meeting.

### **Item 10: FAQ - Can a District Remove a CBOC Member?**

Attached are two documents to frame our discussion on this matter:

- Tom Rubin (18)
- Mac Moore (22)

This will be discussed again at a future meeting.

### **Item 11: Does the California Government Code Sections 54950 et seq Require CBOCs to Follow the Brown Act (Open Meetings)?**

See attached FAQ 5, *What are the major rules and requirements for Bond Oversight Committee?* (23) and Mac Moore's proposed amendment (24).

See also attached FAQ 24, *What is the Brown Act (Open Meetings)?* (26) with proposed amendments. **This item was tabled.**

### **Item 12: Agenda, Second Annual Membership Meeting, Saturday, January 15, 2022 at 10:00 AM**

The following agenda is proposed for the January 15, 2022 Second Annual Membership Meeting:

- Annual Report 2021 – Anton Jungherr, Executive Director
- Nominations for Board Directors
- Election of Board Directors
- Approval of Amendment to CABOC Articles of Incorporation Purpose Statement



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- From the Members

The Board expressed support for this agenda.

### **INFORMATION**

None

### **ADJOURNMENT**

**Item 13: Annual Membership meeting Saturday, January 15, 2022 at 10:00 AM**

**Board Retreat Saturday, January 15, 2022 at 10:30 AM to 1:00 PM**

**Board meeting Saturday, February 12, 2022 at 10:00 AM**

**Item 14: Adjournment by Vice President Carolyn Castillo at 11:35 a.m.**

Date of Minutes: December 18, 2021

Denise Sheehan, Administrative Manager

Distribution: Board and Advisors

Attachments to the agenda packet are included in the official minutes posted on the website. Distribution copies of the minutes do not include the attachments as they were included in the agenda packet for this meeting.



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<b>2022 SCHEDULE BOARD MEETINGS</b>
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Saturday, January 15, 2022 at 10:00 AM Annual Membership Meeting

Saturday, January 15, 2022 at 10:30 AM to 1:00 PM Board Retreat

Saturday, February 12, 2022 at 10:00 AM Board Meeting

Saturday, April 9, 2022 at 10:00 AM

Saturday, June 11, 2022 at 10:00 AM

Saturday, August 13, 2022 at 10:00 AM

Saturday, October 8, 2022 at 10:00 AM

Saturday, December 10, 2022 at 10:00 AM

## **CABOC's "Purpose Statement"**

### **Articles of Incorporation**

#### **Proposed Amendment**

**December 11, 2021 Board Meeting**

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The *California Association of Bond Oversight Committees* is dedicated to the proposition that taxpayers deserve information on proper bond expenditures through facilitation of independent citizens' bond oversight committees in accordance with the passage of Proposition 39 (School Facilities. 55% Local Vote.).

Our purpose is to develop and deliver support such as training, newsletters, conferences and workshops and to represent our collective interests at the statewide level.

#### **4. Purpose Statement September 19, 2019 Articles of Incorporation**

The specific purpose of this corporation is to provide training, assistance, and encouragement to California School Proposition 39 Citizens' Bond Oversight Committee Members through development of training materials, delivery of online training, conferences, workshops, formation of regional groups of California Citizens' Bond Oversight Committees and representing common interest at the statewide level.



**Yes! I want to support independent CBOC's with a donation:**

California Association of Bond Oversight Committees (CABOC) is dedicated to the proposition that taxpayers deserve information on proper bond expenditures through facilitation of independent citizens' bond oversight committees.

Our purpose is to develop and deliver support such as training, newsletters, conference and workshops and to represent our collective interests at the statewide level.

During 2021 CABOC sponsored October 16, 2021 statewide conference, published nineteen newsletters, prepare legislation program 2022, developed website and prepared thirty FAQs.

We need to raise \$5,000 by December 31, 2021. Please. at least \$25. As a nonprofit association we depend on the support of CBOC members, like you, to keep this essential work going.

Please donate online at our secure site - **Click here to Donate.**

CABOC is exempt from Federal income tax under Internal Revenue Code Section 501(c)(3), identification number 84-3416221. Donors can deduct contributions they make to CABOC under IRS Section 170 to the fullest extent allowed by law.

## California Association of Bond Oversight Committees (CABOC)

# COULD CABOC USE ITS OWN “STRATEGIC PLAN”?

## Check it out...

First off, USC’s Sol Price School of Public Policy seems to think so, in its report for CABOC titled:

*“Bond Oversight Done Right: A Sustainable Strategic Plan for the California Association of Bond Oversight Committees (CABOC)”*, August 13<sup>th</sup> 2021.

Why does USC think so? Here’s one person’s – my personal – synopsis [*“a brief summary or general survey”*] of that report. I hope you find it helpful for your work. At the least, I hope you find it interesting enough to read to the end.

“Strategic plans are an efficient way for organizations to establish goals related to time. Strategic plans are critical to tracking progress over time and allowing the organization to self-assess and improve through the redistribution of resources where they are most efficient.”  
[USC report cited above, page 5]

This is as good as it gets regarding the proper and intended USE of a good strategic plan. If you buy into this from USC, or if you think CABOC already does a good job of *“establishing its goals”*; if you already *“track progress over time”* AND *“self-assess”* that progress against achieving your goals; and if you *“improve through the redistribution of resources where they are most efficient”*, then you’ve been using *“strategic processes”* even if you didn’t know it.

The California Association of School Business Officials (CASBO, founded in 1928), speaks equally well to the VALUE of strategic planning (what they call *“organizational planning”*):

*“CASBO by Design”*

“For the past 16-years, CASBO has been dedicated to the organizational planning discipline as a method for guiding the association into a successful future. Last year, the association completed its sixth such plan, CASBO by Design 2.0, a living, breathing document that guided the association in its long-term planning process, which is grassroots in nature, invigorating in procedure and motivating in outcome. Work on our next strategic plan will begin later in 2021.

“CASBO has long been committed to organizational planning because the approach has consistently helped the association envision its future and determine the clear steps to get there. The road map that strategic planning provides has allowed CASBO to remain focused on its unique mission, goals and objectives and to respond effectively to a continually changing environment.”

**So there you have it:** A simple, clear paragraph from USC on the **use** of strategic planning. And two equally simple and clear testimonial paragraphs from a long-running organization (CASBO) on the **value** of such plans.

**Now then, to CABOC:**

The FIVE recommendations from USC can be put in TWO broad categories, which is a good thing for CABOC members and for the public (on the receiving end of CABOC’s efforts):

- ① **Improve your organizational capabilities; and**
- ② **Deliver on your purpose.**

That’s it...that’s what USC is recommending as your most immediate strategic planning objectives. How simple is that? Can – or should – CABOC dig any deeper for value from strategic planning?

① **Continually improve the organization’s capabilities to deliver on its purpose.** This is an INTERNALLY-focused strategy; and is very common across organizations, although the FOUR elements recommended by USC are specific to CABOC:

- **Succession planning** (also known as personnel development, replacement planning, leadership development). USC applies this to your key current personnel.

But CABOC should ask itself: What about key positions NOT currently in place, such as webmaster, librarian/archivist, event manager, etc? Where is your “institutional memory” currently housed and to-be-housed?

- **Financial consultant.**

CABOC should ask itself: Is the consultant the means to an end: Raising more money for operations? Or is it an adjunct to other inhouse means of raising funds that do NOT require a consultant?

- **Performance metrics** (also known as key performance indicators), which are data-driven measures of behaviors, activities and progress towards delivering on your purpose. These are not easy, are not usually self-evident, but are oh-so-important to sustained success.

- **Organizational structure.**

“Form should follow process”, not the other way around. CABOC should ask itself: What organizational structure, what key positions, best facilitate your delivering on your purpose?

② **Focus on your purpose.** This is an EXTERNALLY-focused strategy; and is also very common.

- **Training development and deployment.**

CABOC should ask itself: What about your other purposes? For example, being a statewide champion for real and lasting CBOC independence? Formation of regional CBOC groups? Representing common interests at the statewide level? Where do these fit into your overall strategy, alongside “training development and deployment”?

☞ ☞ ☞ ☞

Note that USC did NOT do the strategic planning for CABOC. Note that it did NOT deliver an actual strategic plan for CABOC, all wrapped up nice and pretty. They delivered a “framework”, not a finished product. That is for CABOC’s leadership and membership, if it chooses to proceed.

Finally, any CABOC strategic plan is only as good as its implementation plan AND its **effective** deployment thereof. For example:

### **Implementation Plan and Deployment**

To successfully improve your **Organizational Capabilities**: These four elements (and any more which CABOC may add or subtract) should be **ranked** in order of importance and their timing for delivery. Or can they – much less should they – be worked in parallel with one another? Does the current organization and membership have the capacity AND the capabilities to work them in parallel?

To successfully deliver on your **Purpose(s)**: This element – training – (and any more which CABOC may add or subtract) should be **ranked** in relation to the organization’s capabilities, above. For example, does the organization need to achieve some minimum level of organizational capabilities across the four elements before focusing on its purpose? Or can it work the purpose – or some of its purposes – in parallel with improving its capacity AND its capabilities?

☞ ☞ ☞ ☞

## California Association of Bond Oversight Committees (CABOC)

### IS CABOC READY FOR “STRATEGIC PLANNING”?

Let’s find out!

Please take five minutes (or less) to fill out this 3-question Survey.

Your anonymity is protected. No one will know which answers are yours.

Overall results will be shared, also compiled to protect your anonymity.

PLEASE CHECK ONE BOX ☐ ONLY. Select the answer which best suits you now.

① How important is it for CABOC to develop and deploy a strategic plan?

- ☐ **Very important.** It should be our top priority.
- ☐ **Important.** It should be one of our Top 3 priorities.
- ☐ **Somewhat important.** It’s a priority, but only after our Top 3 or Top 5 are taken care of first.
- ☐ **Not important at all.** Time and effort is best spent elsewhere.
- ☐ **No opinion or Decline to state.**

② What do you know about “the USC Study” for CABOC?

- ☐ **A lot.** I read it from cover-to-cover.
- ☐ **I have an overview.** I quickly scanned the report.
- ☐ **I have some specific knowledge.** For example, I read the Executive Summary only; or I jumped straight to the Recommendations.
- ☐ **Very little.** I haven’t had the time yet to look at it.
- ☐ **Never heard of it or Decline to state.**

③ What do you know about strategic planning?

- ☐ **A lot.** I have hands-on strategic planning and deployment experience.
- ☐ **Some.** I've worked in organizations which have developed and deployed their strategic plans.
- ☐ **A bit.** I've heard the words "strategic plan".
- ☐ **Nothing much at all,** but I'd like to know more about strategic planning and deployment.
- ☐ **No experience or Decline to state.**



# California Association of Bond Oversight Committees (CABOC)

It is proposed that CABOC's Board take three preliminary steps to assess the organization's readiness and willingness for strategic planning:

① **Issue a simple, 3-question Survey** (attached) to assess CABOC members' awareness of strategic planning. If approved, **this should be released immediately** and results collected no later than the end of calendar year 2021. Please see the attached Survey:

IS CABOC READY FOR "STRATEGIC PLANNING"?

Let's find out!

② **Release a simple, 3-page Synopsis** (attached) of the "USC Study" to all recipients of the Survey, discussed above. If approved, **this should be released at the start of calendar year 2022** as a "primer" for a possible CABOC "strategic planning retreat" (see below) in mid-January 2022. Please see the attached Synopsis:

COULD CABOC USE ITS OWN "STRATEGIC PLAN"?

Check it out...

③ **Conduct a short\* Retreat** in mid-January 2022 to address strategic planning "next steps" for CABOC, if any. It could be structured, for example, as follows (subject, of course, to "massaging" between now and then by the Board):

- |   |                   |
|---|-------------------|
| 1. Safety moment.   | 5-minutes         |
| 2. Introductions all around.  | 10                |
| 3. Review the Survey results: What do they mean for CABOC?          | 45                |
| 4. Review the "USC Study": Is it any use to CABOC? How? Or why not? | 45                |
| 5. What, if anything, should CABOC do next re strategic planning?   | 30                |
| 6. Close-out: Action items, next steps and feedback.                | <u>15-minutes</u> |

\* **Total time:** 2 ½ hours



# California Association of Bond Oversight Committees

## Statement of Financial Position

As of November 30, 2021

	TOTAL
<b>ASSETS</b>	
Current Assets	
Bank Accounts	
Bank of America	7,585
<b>Total Bank Accounts</b>	<b>\$7,585</b>
<b>Total Current Assets</b>	<b>\$7,585</b>
<b>TOTAL ASSETS</b>	<b>\$7,585</b>
<b>LIABILITIES AND EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	2,306
<b>Total Accounts Payable</b>	<b>\$2,306</b>
<b>Total Current Liabilities</b>	<b>\$2,306</b>
<b>Total Liabilities</b>	<b>\$2,306</b>
Equity	
Unrestricted Net Assets	1,470
Net Revenue	3,809
<b>Total Equity</b>	<b>\$5,279</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$7,585</b>





# California Association of Bond Oversight Committees

Statement of Activity  
January - November, 2021

	TOTAL
Revenue	
Conference Fees	3,299
Corporate Sponsor	5,000
Donations Individuals	21,862
Reimbursement Insurance (Directors & Officers)	440
<b>Total Revenue</b>	<b>\$30,601</b>
GROSS PROFIT	<b>\$30,601</b>
Expenditures	
Accounting Software QuickBooks Online	400
Bank Fees Bank of America	16
Conference Expenses e	3,789
Credit Card Processing Anedot	163
Database Constant Contact	12,531
Editing Services	930
Eventbrite Processing Fees	162
Graphic Design	40
Insurance (Directors & Officers)	446
Meeting Software Zoom	243
Newsletters	2,103
Office Expenses	324
Program Support	
Administrative Manager	285
Executive Director	100
Strategic Planning Consultant	1
<b>Total Program Support</b>	<b>386</b>
Video Production	250
Website Hosting FX Domains	716
Website Maintenance	4,294
<b>Total Expenditures</b>	<b>\$26,792</b>
NET OPERATING REVENUE	<b>\$3,809</b>
NET REVENUE	<b>\$3,809</b>



# California Association of Bond Oversight Committees

Budget vs. Actuals: January to November 2021

January - December 2021

	TOTAL		
	ACTUAL	BUDGET	OVER BUDGET
<b>Revenue</b>			
Conference Fees	3,299	2,500	799
Corporate Sponsor	5,000		5,000
Donations Individuals	21,982	6,778	15,204
Grants		5,000	-5,000
Loan (deleted)		5,000	-5,000
Reimbursement Insurance (Directors & Officers)	440	500	-60
Training Fees		2,250	-2,250
<b>Total Revenue</b>	<b>\$30,721</b>	<b>\$22,028</b>	<b>\$8,693</b>
<b>GROSS PROFIT</b>	<b>\$30,721</b>	<b>\$22,028</b>	<b>\$8,693</b>
<b>Expenditures</b>			
Accounting Software QuickBooks Online	400	420	-20
Bank Fees Bank of America	16	160	-144
Conference Expenses e	3,789		3,789
Credit Card Processing Anedot	163	148	15
Database Constant Contact	12,531	13,726	-1,196
Editing Services	930		930
Eventbrite Processing Fees	162		162
Graphic Design	40	500	-460
Insurance (Directors & Officers)	446	500	-54
Meeting Software Zoom	243	395	-152
Newsletters	2,103	1,150	953
Office Expenses	324	745	-421
Program Support			
Administrative Manager	285		285
Executive Director	100		100
Strategic Planning Consultant	1		1
<b>Total Program Support</b>	<b>386</b>		<b>386</b>
Video Production	250		250
Website Hosting FX Domains	716	417	299
Website Maintenance	4,294	3,750	544
<b>Total Expenditures</b>	<b>\$26,792</b>	<b>\$21,911</b>	<b>\$4,881</b>
<b>NET OPERATING REVENUE</b>	<b>\$3,929</b>	<b>\$117</b>	<b>\$3,812</b>
<b>NET REVENUE</b>	<b>\$3,929</b>	<b>\$117</b>	<b>\$3,812</b>

Subject: **K-12 and Community College Districts and their ability, or lack thereof, to remove CBOC Members and/or Eliminate CBOCs**

Date: 11/30/2021 3:26:00 PM Pacific Standard Time

From: tarubin@earthlink.net

To: ajungherr@aol.com

Anton: As we have discussed, I am extremely desirous of the CABOC Board discussing, at its next meeting, the ability of K-12 and Community College Districts to fire CBOC Members and eliminate CBOCs. So we are clear, I'm talking about CBOC Members who have time left in their two-year terms and meet all other requirements, such as remaining active in a senior citizens organization and not having a conflict of interest.

My recommendations are:

1. CABOC should take the position that, once appointed, CBOC members are entitled to complete their statutory two-year term and cannot be removed from their positions by the district board, superintendent, or any other agency of the district; this guarantee of non-removal is essential for CBOC members to perform their oversight responsibilities without fear of being removed.
2. Serving CBOC members who cease meeting the qualifying requirements for being CBOC members (such as no longer being an active member of a *bona fide* taxpayer organization) or have an ethics conflict (such as taking a position with a district construction contractor) forfeit the remaining portion of their terms.
3. CABOC will attempt to clarify this protection through our legislative program (which is expected to take years).
4. CABOC will not attempt to get either judicial (case law) or California Attorney General clarification of this issue because the risks of an adverse decision are significant; if CABOC becomes aware of such cases, CABOC may decide to become involved. This may be reversed in the future if conditions change.
5. CABOC will recommend and assist that individual CBOCs obtain such protections in MOUs – and that the CABOC legislative program will include making such MOUs mandatory if the CBOC desires one.
6. Non-performing CBOC members are a problem, with members that do not attend meetings being the majority of such cases; however, giving district governing boards the ability to “fire” CBOC members “for cause” has the potential for creating a loophole that some district boards may utilize to fire CBOC members that the district believes are troublemakers.
7. CABOC recommends that the individual CBOCs handle these non-performing (or otherwise troublesome) members by setting standards for meeting attendance, tracking attendance, and, for those that violate the standards, the CBOC asks them to resign (such process is best specified in the CBOC bylaws).

My reasons for wanting to discuss this as soon as possible, and for these recommendations, are:

1. I believe that there is a consensus of CABOC leadership that we don't want District boards (or superintendents, or staff) “firing” CBOC members, or eliminating the CBOC itself, as a way to reduce criticism. Unfortunately, we – including you personally – are very familiar with this type of action being taken. There are three main points that the CABOC Board needs to decide:
  - a. Does CABOC want to take a position on this and, if so, what position?
  - b. Does CABOC wish to attempt getting the CABOC position made enforceable and, if so, how:
    - i. Going for specific statutory language
    - ii. Going for a case law judicial decision



- iii. Going for a California Attorney General or other senior attorney opinion
- iv. MOU provision (school-district-by-school-district)

While the above are not entirely mutually exclusive, there absolutely must be a well-through-out, integrated approach, particularly as to priority and timing.

c. Does CABOC wish to publicize its position and, if so, how?

1. There is debate among CABOC leadership if District Boards *et al* should have (as opposed to, do have under law) the ability to “fire” CBOC Members. Some believe that there should be the ability to fire CBOC Members “for cause,” with non-attendance being the most frequently mentioned reason. There appears to be general agreement that no longer meeting the statutory requirement for holding a specific seat, such as the youngest child of a student-parent member graduating, means that the Member is no longer eligible to serve (even here, some CABOC Board Members believing that a CBOC Member in this situation should be allowed to finish the remaining portion of the two-year term, and this last point has not been resolved). A CBOC Member getting into a conflict-of-interest situation, such as taking a position working for a District construction contractor, is another potential “for cause” criterion. There has been significant discussion that Districts having “for cause” termination power could easily become a loophole that allows District to fire CBOC Members without real cause other than the District wanting to rid itself of a CBOC Member it believes is troublesome.
2. While many amateur attorneys have expressed opinions on what the legal requirements are, I think that the consensus is that this is one of the uncounted areas of the law where the situation is not totally clear. The statute says that CBOC members are appointed by the district board for two-year terms. There is nothing in that statute (or others I have reviewed) about the boards being able to “fire” CBOC members and nothing about them not being able to. I haven’t seen anything in California case law that appears to be on point (a “removal” proponent suggested *Fee v Fitts* [Cal Ct. App. 1930, <https://www.courtlistener.com/opinion/3285210/fee-v-fitts/>] supports firing, but the decision states, “It is a well settled rule of law that *where there are no restrictive provisions* [emphasis added], the power of appointment carries with it the power of removal,” but the two-year term is obviously a “restrictive (statutory) provision;” I’ve also been forwarded a discussion by Fayda Bluestein, a Professor of Public Law and Government at the University of North Carolina School of Government on “removing members of appointed boards,” but this is a discussion of *North Carolina* law and, even here, we have, in a comparable context, “I think this is an open question of law in North Carolina.” [Removing Members of Appointed Boards | UNC School of Government](#)).
3. Assuming there is agreement that the legal question is unsettled, and that we want to move towards resolution, the obvious first question for the CABOC board is, what position does it wish to take on CBOC Members being fired; with potential options including:
  - a. CBOC Members can never be fired as long as they meet the required qualifications
  - b. CBOC Members can be fired by the district board that appointed them at any time for any reason
  - c. CBOC Members can only be fired by the district board that appointed them for cause (such causes to be specified in statute, if possible)
  - d. CBOC Members cannot be fired by the district board that appointed them, but may be fired, for cause, by another entity, such as the County Board of Education (keep in mind that there are a few cases where the appointing board IS the County Board of Education)
  - e. Firing (or otherwise replacement) of CBOC members (or not) is specified by the MOU for each district and its CBOC
  - f. Other
4. Once the decision in 4. Is reached, the next decision is how to go about implementing it (see 1.b. above) and, finally, what does CABOC want to communicate about its objective and how?
5. One option to move towards resolution is to put this in our legislative program. This will likely take some time, likely years, to achieve and, until the final State Legislative action and the signing of the bill by the Governor, there is always uncertainty about what the result will be, including:
  - a. Total failure to get anything changed
  - b. Long and uncertain delay; up to and including finally getting the bill passed and then vetoed by the Governor



- c. The desired outcome can be changed, reduced, or even totally reversed from what is desired in the original bill – and, of course, any law that can be changed can later be changed back the way it was before, or worse
- d. No matter how tightly the bill is written, those who want to ignore it will always find a way – and will always be able to find legal counsel that will opine that they don't have to follow it –AND, even where there appears to be a very clear violation of the statute, enforcement can be problematic, expensive, and time-consuming – as in, if you go to court and win that a CBOC member was improperly fired, by the time there is a final judicial opinion, the two-year term can be long since over.

The good thing about first tying for legislative action is that there is far less chance of a negative outcome than some of the other options (particularly judicial), it is generally possible to shift lanes and initiate other options at any time, and there is no real problem in pursuing the MOU option simultaneously.

7. Filing a legal challenge to the firing of a CBOC member is likely to produce a faster outcome, but with a far higher possibility of a negative result:
  - a. In a legal action of this type, it would normally be expected that there could be a judicial opinion from the court of origin well within a year of the original filing – but, the current public health crisis is significantly lengthening the times to reach such decisions, particularly for matters that are not seen as of high importance by the courts. Also, there is a likelihood of the decision being appealed, which could add years to the time to final outcome, with the uncertainty of result persisting during this entire time – I'll offer an opinion that a District that loses, it is very likely to appeal. California has the standard state judicial model where such opinions only considered as precedents after a final appellate decision, although a superior court opinion, particularly a final one, would have value in subsequent legal disputes.
  - b. There is general understanding that cases of the public vs. a government agency, the judicial system can frequently tend to favor the government.
  - c. In some ways, case law can be more important than statutory law, particularly since case law often "fills in the blanks" with details that were not resolved, or even considered, or may not have even existed, when the original statute was written. Of course, when the losers do not like the outcome, and they have access to their local delegation to Sacramento, the next step can be new statutory law that erases the case law.
  - d. In pursuing a judicial outcome, it must always be remembered that that it is very possible that the outcome will be the exact opposite of what is desired. Also, judges, particularly at the courts of origin, tend to look for narrow rulings, so, even if you win, you may win on narrow grounds, such as the district board did not properly follow its own procedures, which may not be useful in any other situations. Even appellate court decisions can be "unpublished," which means that they do not have full, or even any, value as precedents.
  - e. Courts will almost always encourage the parties to settle the dispute in a manner that is mutually agreeable to both parties – which means that, even if the result is acceptable for this particular, it will have no value as a precedent. Keep in mind that, judicial calendars being what they are, may trial court judges will, in essence, offer the parties a choice between a long delay to the hearing or a settlement that will be less satisfactory than a victory at trial to both parties.
  - f. Timing is very important – if a CBOC is "fired," and then wins in court, by the time of the final decision, the member's term may be over – so, what would the resolution be if this even does result in a decision. It is possible to ask for a temporary restraining order (TRO) and/or preliminary injunction (PI), but the general standards for a TRO or PI are (a) the plaintiff is likely to prevail at trial, AND (2) if the TRO or PI is not granted, there will be irreversible harm to the plaintiff or other parties. These appear to be high hurdles in this situation.
  - g. Litigation is expensive; in a dispute of this type, it is less likely that *pro bono* counsel will be available, although this is always something that should be considered. The district, on the other hand, has an unlimited litigation budget, known as the public tax base.
8. Another option is asking for a decision from the Attorney General (AG) of California, such as was done to clarify the meaning of "administrator salaries," as stipulated in Prop. 39, for eligibility for being paid by school construction bond funds.

Attorney General opinions are generally regarded as highly influential, ranking just below statutory or case law, and far higher than the opinion of any other legal counsel, particularly those that are engaged by a party to a dispute. Most local governments will strongly hesitate to go against an AG opinion.

Attorney General opinions are not generally provided unless specifically requested by a California State-wide elected or high appointed official, such as a sitting member of the Legislature.

These decisions take time, depending upon perceived importance and workload (always exceeding resources), but is often faster than the case law route and can be far faster than the legislative route.

Again, once initiated, there is significant risk of a decision adverse to what CABOC would prefer.

9. The MOU route is a one-at-a-time approach and is highly dependent on the ability of each CBOC to be willing to undertake negotiation with its district and be able to successfully negotiate the MOU provisions it is looking for. CABOC can provide assistance to CBOCs and individual CBOC members, including MOU/bylaw templates and one-on-one assistance, but the outcome are highly dependent on the individual districts, their governing board members, and their superintendent. Of course, the worse the district, the less likely they are to agree to an MOU that has them giving up any power or control. One important favorable attribute of the MOU approach is, heads, we win, tails, we are no worse off than we were before.
10. An important part of the MOU approach should be including a requirement for MOUs for any and all CBOCs that want them in our legislative program.

Any questions, you know where to find me.

Tom Rubin

**Thomas A. Rubin**

Thomas A. Rubin, Consultant  
CPA, CMA, CMC, CIA, CGFM, CFM

(510) 531-0624 Work

(213) 447-6601 Mobile

[tarubin@earthlink.net](mailto:tarubin@earthlink.net)

2007 Bywood Drive

Oakland, California 94602-1937



Subject: **Re: CABOC Conference Q&A to go to Board Members for Their Approval - Deadline November 10, 2021**  
Date: 11/7/2021 9:23:35 AM Pacific Standard Time  
From: macmoore55@yahoo.com  
To: tarubin@earthlink.net  
Cc: ajungherr@aol.com

Good Morning Tom,

I think this issue is an important policy position and the Board should have a good discussion and debate before deciding where the organization stands. I'd like to make three points.

First, we should determine where CABOC stands independent of current law. CABOC has a legislative agenda, and if we have a position that is not reflected in law, we can advocate for change or clarification. From your summary of the discussion, it seems that participants felt there could be some causes that warranted removal such as chronic absenteeism in addition to the conflict of interest and organizational affiliation requirements. It seems the concerns were around potential use of removal power for non-legitimate political or policy reasons. A hypothetical good solution would allow for legitimate but prohibit illegitimate reasons for removal.

Second, the interpretation of law should be made by legal counsel, not by the majority vote of non-experts. You and I have had a good debate on the subject, but we are not lawyers. Thus, I advocate that CABOC should get a legal opinion. In general, I think that CABOC should engage a legal expert who can answer such questions as they come up from time-to-time. (My google search turned up an article that supports my position, but it's from North Carolina <https://canons.sog.unc.edu/removing-members-of-appointed-boards/>).

Third, I think a solution that all could agree on is at hand. You have been a strong proponent of the legally binding MOU as the instrument defining the relationship between Districts and CBOCs and I agree. An MOU could include listing of legitimate causes for removal such as conflict of interest, chronic absenteeism, felony conviction and the like, and specify that removal is not allowed except for the specified causes. I like this solution because it would clearly establish that arbitrary removal is not allowed. The problem with the status quo is that absent clear-cut procedures, the onus is on the CBOC member to sue for improper removal and most volunteers are not going to fund such a challenge out of their own pockets.

Mac Moore  
Mobile: 916-712-7303

On Saturday, November 6, 2021, 10:37:35 AM PDT, [tarubin@earthlink.net](mailto:tarubin@earthlink.net) <tarubin@earthlink.net> wrote:

Mac:

Thank you for your response below.

If you want this issue to go out to the Board at its December 11<sup>th</sup> meeting, then it will go there. However, I ask you to reconsider.

**What are the major rules and requirements for a Bond Oversight Committee?**

The major requirements are as follow:

1. Prepare and publish an Annual Report
2. Hold meetings at least once a year.
3. ~~Follow the Brown Act (e.g., Open and noticed meetings, published Agendas)~~
- 4.3. Consist of a minimum of seven members with five requirements as follows:

- One-member active in a business organization representing the business community located within the district.
- One-member active in a senior citizens' organization.
- One-member active in a bona fide taxpayer's organization.
- One member who is the parent or guardian of a child enrolled in the district; and  
(For Community College: student currently both enrolled and active in community college group.)
- One member who is both a parent or guardian of a child enrolled in the district and active in a parent-teacher organization.  
(For Community College: member active in the support and organization of a community college or community colleges of the district.)
- The remaining two members are "at large" community positions.

5.4. Receive and review Annual Performance and Financial Audits

6.5. Provide an Annual Compliance Opinion.

Q5 12.22.20



Subject: **Re: CABOC FAQ Approval Request Due Tuesday, November 23, 2021**  
Date: 11/23/2021 4:00:33 PM Pacific Standard Time  
From: [ajungherr@aol.com](mailto:ajungherr@aol.com)  
To: [macmoore55@yahoo.com](mailto:macmoore55@yahoo.com)  
Cc: [ajungherr@aol.com](mailto:ajungherr@aol.com), [nickmarinovich52@gmail.com](mailto:nickmarinovich52@gmail.com)

Thanks for you comments. Will place on December 11, 2021 Board agenda.

**Anton Jungherr**

California Association of Bond Oversight Committees

Co-Founder/Executive Director

[ajungherr@aol.com](mailto:ajungherr@aol.com)

510.697.7212 cell

[www.bondoversight.org](http://www.bondoversight.org)

In a message dated 11/22/2021 8:28:35 PM Pacific Standard Time, [macmoore55@yahoo.com](mailto:macmoore55@yahoo.com) writes:

All good except the changes to 10 and 24 related to the Brown Act. I think in our efforts to satisfy Mr. Michael's outside the mainstream position, we have worded the FAQ as to imply that CBOC adherence to Brown Act is controversial and negative (that is, we only adhere to the Brown Act because no one has challenged this idea in court). Most reasonable folks (including us in our former FAQ) would interpret the law as implying Brown Act adherence and even if it doesn't, adherence to the Brown Act for a committee representing the public makes good sense.

So I would recommend rewording the FAQ to the effect:

Requirement 3 replaced with "hold meetings open to the public"

and in the explanation "While the open meeting requirement does not explicitly reference the Ralph M. Brown (Open Meetings) Act, most school districts and CBOCs have interpreted the requirement to establish that CBOC public meetings should be noticed and held in accordance with Brown Act provisions. CABOC agrees with this position."

The argument made by Mr. Michael's that somehow this interpretation was nefariously introduced by a conspiratorial cabal to inhibit participation in oversight is poppycock. The Brown Act is good public policy. I can't think of one reasonable person who was hesitant to participate because they were afraid they would be thrown into Brown Act prison. We should not coddle such outlandish and fringe opinions.

Mac Moore

Mobile: 916-712-7303

On Sunday, November 14, 2021, 12:27:12 AM PST, Anton Jungherr <[ajungherr@aol.com](mailto:ajungherr@aol.com)> wrote:

Attached are FAQs for your review prior to posting on the CABOC website.

Please send your comments, if any, to Anton Jungherr by Tuesday, November 23, 2021.

**If you do not submit any comments to Anton Jungherr by Tuesday, November 23, 2021 it will be assumed that you have no comments and that the FAQs will be posted on the CABOC website.**

**Anton Jungherr**

California Association of Bond Oversight Committees

Co-Founder/Executive Director

[ajungherr@aol.com](mailto:ajungherr@aol.com)

510.697.7212 cell

[www.bondoversight.org](http://www.bondoversight.org)



24.1 ~~What is the Brown Act (Open Meetings)?~~

The ~~Ralph M. Brown Act (Open Meetings)~~, California Government Code Sections 54950 *et seq.*<sup>1</sup>, regulates many aspects of all government agency meetings including those of Citizens' Bond Oversight Committee (CBOC) meetings.

The ~~Brown Act is essentially a body of rules designed to ensure open government and fairness. Because of the complexities and potential penalties, we recommend that qualified legal counsel educate CBOC members and staff on the Brown Act at the beginning of their terms of service and that the advice of legal counsel be obtained in advance of any matters that may be questionable.~~

What is the Brown Act (Opening Meetings)?

Education Code Section 15280(b) provides, "All citizens' oversight 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 governing board of the district."

Government Code Section 54954.2 provides that K-12 school districts shall at least 72 hours before a regular meeting post an agenda with a brief general description of business to be transacted or discussed.

Education Code Section 72121(b) prescribes the same requirements for community college districts.

California Coalition for Adequate School Housing (C.A.S.H.) in their 2001 *Proposition 39 Best Practices Handbook* (2006, page 17) stated, "All Committee proceeding shall be open to the public and shall be subject to the provisions of The Ralph M Brown Act." This handbook was prepared by the C.A.S.H. Legal Advisory Committee consisting of thirteen lawyers representing various school district law firms and four financial advisors.

The C.A.S.H. statement was not supported by any legal citations. The C.A.S.H. statement is merely their opinion and has no legal effect.

~~There is no California statute or case law that requires Proposition 39 school bond citizens' bond oversight committees (CBOC) to follow The Ralph M. Brown Act (Open Meetings) California Government Code Sections 54950 et seq.~~

However, to the best of CABOC understanding, school districts have required California Proposition 39 school CBOC to follow the Brown Act. It is also our understanding that this requirement has never been challenged in court.

<sup>1</sup>  
[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5](https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5)



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CABOC has provided answers to various Brown Act FAQs below on the bases that the Brown Act is applicable to Proposition 39 school CBOC.

#### 24.2 What are the main provisions of the Brown Act?

All CBOC meetings, including those of standing committees, must be open to the public.

A meeting is any congregation of a quorum of the CBOC members at the same time and place including Zoom or other electronic meetings.

Meetings can also include phone calls and/or an e-mail thread that includes a quorum of the CBOC.

A quorum of CBOC members is generally a majority of the active membership. For example, if there are nine CBOC seats and all nine are filled, a quorum is five – but, if two of the seats are unfilled, a quorum is four.

#### 24.3 What is a Brown Act “serial meeting?”

A serial meeting occurs when two or more individual meetings involving CBOC members on the same topic combine to involve a quorum of CBOC members.

For example, if there is a five-member board, with a quorum being three members, Member A can meet privately with Member B and discuss a matter, but if Member B then meets with Member C to discuss the same topics, an unallowable serial meeting may be deemed to have occurred.

A serial meeting can also occur if a non-member is the common link if the positions or concerns of CBOC members are relayed to other CBOC members.

#### 24.4 Are meetings, phone calls, and/or e-mails to or between CBOC members subject to the Brown Act?

A CBOC member can e-mail one or more other members on a topic if the number of CBOC members involved is kept under that of a quorum.

E-mails that are sent out by staff to inform CBOC members, such as transmitting a meeting agenda package, are not subject to the Brown Act. However, e-mails should be used with caution because if any of the members “respond to all,” it can

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become subject to the Brown Act requirements. It may therefore be a good idea to send such e-mails with most addresses as "bcc's" to avoid the potential problems of members being able to respond to all. CBOC members should not send out e-mails to what could become a quorum of members discussing such matters.

#### 24.5 What are the Brown Act advance notice requirements for meetings?

A regular meeting must be noticed 72 hours in advance on the CBOC or district website. If the CBOC does not have a website, the meeting notice must be posted at a stipulated place accessible to members of the public. Weekend hours may be counted as part of the 72-hour period. The notice shall include the time and place and alternative access (Zoom, call-in, etc.) and the agenda with the items to be considered at the meeting.

All meetings must have an agenda and the agenda must include a description of each item on the agenda.

Special meetings – generally, a non-regularly scheduled meeting on a single topic, require 24 hours' notice.

#### 24.6 How broad can a Brown Act "meeting" be construed?

A "meeting," as that term is defined under the Brown Act, can be deemed to occur whenever a majority of the members are in one location, including electronically and even at a social event where the members did not know that other members would be in attendance. At such occurrences, members must be careful not to discuss CBOC business.



24.7 Does the Brown Act require that the agenda package be accessible by members of the public?

Upon written request by the media, or any member of the public, the agenda and all documents shall be sent by the district to the person making the request at the time the agenda is posted.

Many government boards, including CBOCs, post their entire agenda packages on their web sites, in a downloadable format, as part of their meeting notice process.

24.8 Under the Brown Act what rights does the public have to address the CBOC at meetings?

For regular meetings, the public must be provided an opportunity to address not only any item on the agenda, but any item within the subject matter of the CBOC.

Generally, on items on the agenda, members of the public are given the opportunity to comment after the presentation of the item is made to the CBOC by staff and before the CBOC members begin their discussion.

Members of the public may comment on any CBOC applicable topic they wish during a general public comment period. Some CBOCs have their general public comment period near the top of the list of agenda items, others at the end.

For special meetings, the public must be provided an opportunity to address any item on the agenda.

24.9 Does the Brown Act allow items that the CBOC can discuss in closed session?

Certain items, such as personnel matters and possible and/or active legal actions, may be considered in executive session where the public is not allowed.

However, such items must be placed on the agenda, the items to be considered in closed session announced in open meeting prior to the commencement of the closed session, and the results of any actions taken in executive session announced. The public has the same right to comment as on any other items prior to the commencement of the closed session.

24.10 What Are the Brown Act requirements for meeting minutes?

Minutes of meetings must be kept.

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Members of the public are entitled to know how each member of the CBOC voted on action items.

Many CBOCs post their meeting minutes on their web site to be available to the public and other interested parties in perpetuity.

24.11 Are CBOC subcommittees and task force meetings subject to the Brown Act requirements?

Standing subcommittee – those that are intended to remain in existence without a predetermined end date or achievement of a specific objective – are also subject to the Brown Act rules shown above even if a quorum is not present.

Task forces that are established for limited specific purposes and terms are not subject to the Brown Act if a quorum of CBOC members is not in attendance.

24.12 Does the Brown Act require members of the public to identify themselves?

Members of the public cannot be required to give names or sign a register as a condition of attendance or speaking. They may be required to go through security procedures such as metal detectors.

24.13 Does the Brown Act allow CBOC meetings to be recorded?

The CBOC, the press/media, and the public may record and broadcast meetings if they do not interfere with the conduct of the meeting and comply with all applicable regulations such as not blocking fire escape access isles.

If the CBOC records its own meetings, it must make such records available to the public or press/media upon request. Some CBOCs make such recordings available for download on their web site.