

West Contra Costa County Citizens' Bond Oversight Committee (CBOC)

Resolution No. 22-01

February 14, 2022

**Support for the
California Association of Bond Oversight Committee (CABOC)
Legislative Action Plan to
Increase the Effectiveness of
Prop. 39 (2000) School Construction Bond
Bond Oversight Committees**

WHEREAS, the legislative action to place Proposition 39 – “School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements,” on the ballot, and enacted by the California electorate in 2000, established Citizens’ Bond Oversight Committees as a requirement for school construction bonds passed by 55% majorities; and

WHEREAS, California Education Code §15278 implementing Proposition 39 states, “The purpose of the citizens’ oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens’ oversight committee shall actively review and report on the proper expenditure of taxpayers’ money for school construction. The Citizens’ oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution;” and

WHEREAS, since the passage of Proposition 39, nearly every election in California includes new bond measures with passage set at 55% instead of 66%, thus requiring the establishment of citizens’ oversight committees as described above; and

WHEREAS, five of seven WCCUSD bond measures were set up for voter approval at a threshold of 55%, instead of a 2/3 vote, and thus require oversight by a Citizen’s Bond Oversight Committee (CBOC) per California Ed Code Section 15278 and 15280 (referred to here as “WCCUSD Prop 39” bond measures); and

WHEREAS, for all WCCUSD Prop 39 bond measures, ballot measure language approved by WCCUSD’s Board of Education promised voters an “independent” CBOC and “strict citizens’ oversight”. For example, in Measure R, under the heading, Financial Accountability, the Board promised (all caps included): “ALL BOND EXPENDITURES WILL BE MONITORED BY AN INDEPENDENT CITIZENS' BOND OVERSIGHT COMMITTEE (EDUCATION CODE SECTION 15278 ET SEQ.) TO ENSURE THAT FUNDS ARE SPENT AS PROMISED AND SPECIFIED....”

WHEREAS, despite these very clear electoral and legislative mandates, WCCUSD and other K-12 and community college districts in the State of California have not acted to fully and properly comply with them; and

WHEREAS, some K-12 and community college districts school construction bond programs in the State of California have produced fraud, waste, and/or abuse that could have been detected earlier, limited in scope and cost, and/or prevented if the legally mandated effective oversight had existed; and

WHEREAS, the California Association of Bond Oversight Committees (“CABOC”) has worked with K-12 and community college stakeholders to develop a legislative action plan to implement effective improvements to strengthen the role of Citizens’ Bond Oversight Committees for California K-12 and community college districts; and

WHEREAS, the West Contra Costa County CBOC finds that there is a vital need for changes and improvements in California State statute to ensure and communicate to voters, taxpayers, residents, parents, and particularly students that K-12 and community college districts that school construction bond programs and projects are planned, designed, constructed, and completed to properly address the facilities needs of their students on-time; within budget; in compliance with all applicable statutory, regulatory, and contractual requirements; and working to allow our students to strive for all that they can achieve.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The West Contra Costa County CBOC recommends implementation of the California Association of Bond Oversight Committees Legislative Plan, attached as Attachment A.
2. That this Resolution be transmitted to Senator Nancy Skinner (District 9) and Assemblymember Buffy Wicks (District 15) with a strong recommendation for passage of the bill.
3. That this Resolution be placed in a position of prominence on the web site of the West Contra Costa County CBOC to encourage others to advocate for the passage of the bill.

VOTED on February 14, 2022, by the following vote:

AYES: 6

ABSTENTIONS:

NAYS: 0

ABSENCES: 0

/s/ John Anderson

/s/ Maisha Cole

John Anderson
Chair

Maisha Cole
Vice-Chair

ATTACHMENT A



California Association of Bond Oversight Committees Legislative Program 2021

Approved by Executive Committee December 22, 2020, as amended April 27, 2021 to change Section 2, Performance Audits.

1. Develop easy to access online training for members of Citizens Bond Oversight Committees

There is no specific proposal at this time and this will be developed subsequent to any legislative proposals. There is a training committee. A funding source (s) will be need to be identified subsequent to development of content.

It is anticipated that CABOC would facilitate a panel discussion with the State Treasurer and FCMAT regarding a Statewide Training Program sometime this Spring.

2. Amend statutory code on performance audits to include the effectiveness and results of bond program

Add to Education Code Section 14502.1: (Amendment April 27, 2021)

(g) On or before January 1 , 202X, the Controller, in consultation with the State Allocation Board, the Department of Finance, and the State Department of Education, shall submit content on effectiveness and results performance audits to the Education Audits Appeal Panel to be included in the audit guide, Standards and Procedures for Audits of California K-12 Local Educational Agencies beginning in the 20xx-xx fiscal year, that is related to the performance audits required for school facility projects, as described in Section 15286.

Rationale: Currently most school or community college districts performance audits are referred to as compliance audits. They focus on whether funds were spent on projects authorized in the ballot measure and confirmation that no bond funds were expended on operating expenses. Compliance refers to adherence to the provisions of these two provisions of the State Constitution related to 55% school bonds.

Compliance Audits do not review how effective and efficient bond dollars are spent ways to improve the bond program and how well the District is proceeding towards completion of the projects presented to the voters. Moreover, purely compliance audits often find no exceptions or irregularities and often touted as "clean audits" when there could be gross inefficiencies in expenditures or worse waste fraud and abuse that would have been discovered in an efficiency audit. For instance, the District could have a less than competitive consultant selection process that involved pay to play that would likely not be discovered in a compliance audit.



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3. Expand the role of the Citizen's Bond Oversight Committees in selecting and interfacing with bond program auditors.

Education Code Section 15278 (b)

(c) In furtherance of its purpose, the citizens' oversight committee shall engage in the following activities:

(1) The citizens' oversight committee shall appoint a representative from its membership to participate in the establishment of the scope of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the preparation of the procurement document for the performance auditor, and the selection of the performance auditor.

Rationale: The annual performance audit is one of the most important tools for a bond oversight committee to report to the public on the proper spending of bond dollars. It is critical the oversight committee have meaningful input into the audit process from who will prepare the audit to what it will cover.

4. Require bond measures proposed to voters under the reduced threshold to include specific project lists

Education Code Section 15278

In order to properly review bond expenditures, the citizens' oversight committee shall review all expenditures on all capital projects, including those that are partially funded by non-bond funding sources and those funded by non-bond funding sources. All project expenditures should be supported by a long-range facility master plan.

Rationale: It is recognized that capital projects often have multiple funding sources with the mixing of bond proceeds financing along with other revenue, for example, state grants, Mello Roos Community Facility Districts, and developer fees. Regardless, in order to properly plan, manage and account for capital projects, all facilities projects should be included in the district's comprehensive and properly maintained long range facility master plan, as well as the district's project management and accounting system, regardless of funding sources. Therefore, to properly assess the district's budget management capabilities, the BOC should be able to access and review project budget expenditure reports and audits concerning capital projects whether they are funded wholly or in part by bond funds. Only projects funded entirely by sources other than bond funds might be considered outside the purview of the BOC, although these too should be included in the facility master plan and related management and accounting systems.



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Education Code Section 16322

(h) The facilities master plan shall, for each project, indicate the sources of funding, name of project and location, work to be performed and cost including, but not limited to, each bond measure approved by, or to be submitted to, the district electorate and each bond ballot measure shall reference the facilities master plan in compliance with the Article XIII A requirement for the "list of the specific school facilities projects to be funded." It is explicitly recognized that such a master plan may include a reasonable contingency for unforeseen conditions and emergency requirements.

Rationale: It is important the electorate have as much information as possible on how bond proceeds are spent with reasonable flexibility for unforeseen situations. The existence of a master plan to provide guidance for bond spending is the foundation of proper spending.

5. Change the appointing authority for members of Citizen's Bond Oversight Committees.

Each K-12 and Community College district shall form a BOC member selection committee to prepare a public announcement, at least semi-annually and as needed to fill vacant positions, and use other means as it considers appropriate, to inform interested parties that the district is looking for candidates for its BOC. Interested parties shall complete an application indicating their qualifications for service and their interest in serving on the BOC.

The selection committee will vet and evaluate the candidates and make recommendations to the governing board for the candidate or candidates that it determines are qualified for the BOC. The selection committee shall include a member of the bond oversight committee and a member of the public. If there is no existing BOC, a representative from a local taxpayers association, and a State of California taxpayers association shall replace the BOC member on the selection committee. The BOC selection committee shall make its recommendations to the Board President and the Board shall appoint the candidate it determines is most qualified for each BOC member position from those recommended. The results shall be part of any agenda item for selection recommendations. All applicant's information, such as resumes, shall be part of an agenda item.

Subsequent to the original appointment of a bond oversight committee member, such member shall be reappointed without such a process. Bond Oversight Committee members once appointed shall not be removed except for cause by the Bond Oversight Committee such as an excessive absence or no longer meeting the minimum legal requirements of the position. Only one Oversight Committee shall exist for a District which has multiple bond measures.

Rationale: The foundation for effective bond oversight is the existence of qualified and independent members. The selection process is best served being as open and transparent as possible with community input. The existence of an independent selection panel who would



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recommend to the appointing authority and Trustees facilities transparency. Consistent with independent oversight members should only be removed for a significant legal or compliance reason, not because of concerns for proper spending or the management of the bond program.

6. Require districts to provide a minimal budget for the oversight committees, including a budget to hire independent counsel with municipal bond expertise

Education Code Section 15280 (a) (1)

The governing board of the district shall provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to hire independent legal counsel and publicize the conclusions of the citizens' oversight committee. At the discretion of the governing Board, the proceeds of school construction bonds may be utilized to pay the expenditures of the BOC.

Rationale: There is an inherent conflict of interest for the Oversight Committee to attempt to use the same Counsel as District. Independent Legal Counsel is consistent with independent oversight. Also, to clear up potential ambiguities in interpretation, the code should be amended to make it explicit that supporting a bond oversight committee, including their funding of legal counsel, is an appropriate use of bond proceeds.

7. Require districts to provide a web presence for Citizens Bond Oversight Committees to prominently display meeting agendas and reports.

Education Code Section 15280 (b)

Documents posted to the website shall be retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications. The citizen's oversight committee shall approve the design of the website. A direct link shall be posted on the governing board's primary Internet website or home page to the citizen's oversight committee's website. The governing board shall provide the citizen's oversight committee control over their website so that they can promptly upload documents to that website.

Rationale: This recommendation will increase the visibility of the District and its ability to communicate to the public. The proposed language is consistent with AB 2257(Manschein Local agency meetings: agenda on line posting) that was signed into law in 2016.



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8. By Laws developed by the CABOC and consistent with Committee control over process and rules of operation

Education Code Section 15278 (c)

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost saving measures, including, but not limited to, all the following:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in school site design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

(6) Establishing its own operational by laws (added)

Rationale: Oversight Committee By Laws are most typically prepared by the District and often establish provisions that inhibit good oversight. For instance, there can be a limit on the number for meetings or establish the District rather than the Oversight Committee sets the Agenda of the meetings. A Committee establishing its own by laws reinforces the independence of the oversight process.



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