

School Construction Bond Citizens Oversight Committee (CBOC) Memorandums of Understanding (MOU) and Bylaws

Introduction

This section contains three documents and overviews of what they are and how CBOCs can utilize them to help empower themselves:

1. Short-form Memorandum of Understanding (MOU)
2. Long-form MOU
3. Bylaws

It also has a selected history of how the concept of CBOCs developed in California School Construction Bonds (SCB).

CABOC's legislative agenda is to increase the power of CBOCs to perform their Prop. 39 duties and to protect CBOCs from adverse actions of the districts that they were formed to oversee – unfortunately, CABOC is very aware of such actions strongly hindering, or even disallowing, the legally authorized work of CBOCs. However, for the present, the best course of action is for each CBOC to do what it can to protect itself to enable it to do its job and to inform the public – and CABOC is ready, willing, and able to assist.

In this context, an MOU is a legally enforceable contract between the CBOC and the K-12 or community college district and its SCBs it was created to oversee. Its elements include establishing the details of the relationship between the District and the CBOC, including the mission of the CBOC and its responsibilities and powers, and the obligations of the District to support the CBOC in its work. The MOU should also cover the CBOC members and how they are appointed to the CBOC.

Bylaws are the internal working rules and procedures of the CBOC, including frequency of meetings, officers and their selection, process for setting the meeting agendas, committees, etc.

Each of the above is presented as a Word™ document designed to be utilized as a template by CBOCs in negotiating MOUs with the K-12 or community college district that it responsible for overseeing, establishing the language thereof, and it the CBOC preparing its Bylaws. CABOC grants permission for CBOCs and other stakeholders to use these resources as they wish to develop their own documents.

For Districts that have not previously passed a SCB, we recommend that a working group of stakeholders work with the District prior to the establishment of the CBOC, which must occur within "... 60 days of the date that the governing board enters the election results on its minutes

p ursuant to Section 15274” (Education Code (Ed Code) §15278.(a)), to negotiate the terms and language of the MOU.

The stakeholders will generally be best served by getting involved as the District is beginning to develop its plans for a SCB, if not earlier when the District is preparing or updating its long-range facilities expansion, upgrade, and renewal and replacement plans. The overall concept is that stakeholders will agree to support the SCB, but only after studying the details and concluding that there is a requirement for the proposed expenditures; the District has proper plans, priorities, qualified personnel, and proper procedures in place to manage the construction program; and that there are post-election safeguards mandated by the terms of the ballot issue – including a strong CBOC. The sooner the stakeholders get involved with the District, its facilities planning, and the preparation for a bond election, the better.

Existing CBOCs may wish to consider these documents to determine if establishment of some of these provisions may improve the ability of the CBOC to perform its statutory responsibilities. Again, timing is key; both the CBOC and external stakeholders with similar interests will find that the best time to negotiate with a District for a truly independent, powerful CBOC is when the District is planning on presenting a new SCB ballot measure to the electorate – again, as early in that process as possible.

Besides these templates, we also recommend reviewing other documents on the CBOC web site prior to entering into such negotiations, particularly “Frequently Asked Questions” (FAQ). Many elements in the “Short-Form” MOU have a FAQ that provides more information – including explaining why such protections in the MOU are necessary. Another document that can be useful in this regard is *Citizen Oversight of Public School Construction Programs – In Search of Promising Practice* (21st Century School Fund, February 12, 2003)¹.

CABOC maintains a “Help Desk” to assist CBOC members and other interested stakeholders. If desired, CABOC can provide an interested CBOC member or other stakeholder with a CABOC member with many years of experience to assist in preparing and negotiating your MOU and Bylaws.

Short-Form MOU

We recommend that potential users of these templates first review the “Short-Form” MOU, which is based on the CABOC best practices for the powers and responsibilities that CBOCs should understand. Some of these best practices can be traced directly back to Proposition 39 of 2000, which established the School Construction Bond (SCB) program, and the associated State Statutes (Ed Code §§15278-52) allowing such bond ballot measures to pass with 55% majorities if a CBOC is established. However, many are not based in statute and, instead, are the products of lessons learned by various CBOCs in their dealings with the districts and the SCB programs they oversee.

¹ [Microsoft Word - Oversight Paper - Final.doc \(21csf.org\)](#)

Many CBOC members who review these documents may be surprised at all the recommendations in them giving CBOCs greater power over their own affairs than they may be used to; in many districts, CBOCs have little independence or power to do anything that the District does not direct. The CABOC considers such control of the CBOC by the District it is responsible for overseeing to be directly contrary to the intention of Prop. 39 that the passage of School Construction Bonds by the reduced 55% majority is only allowed if there is a CBOC that is empowered to fulfill its statutory duties.

In many cases, District boards and superintendents were, and will be, reluctant to have an independent CBOC with the power to do its job. The history of CBOCs gaining such powers is frequently tied to the CBOC advocates knowing that their ability to gain these powers is one of timing -- the best time to approach a District to gain these powers is when the District is preparing a new bond ballot measure to be presented to the electorate. In this political situation, almost all Districts would far prefer the CBOC (or, for a District's first Prop. 39 bond ballot measure, other stakeholders, such as PTSA/PTAs, chambers of commerce, taxpayer and senior citizen organizations, construction professional organizations, etc.) supporting the ballot measure because the District is making proper preparations for sound program and project management, rather than the CBOC and/or other independent bodies making public statements that it/they has major concerns.

Therefore, the Short-Form MOU can be used as a checklist for CBOCs to determine which of the listed powers are most important in its unique situation and its priorities for negotiation with the District on the details of the MOU.

Always keep in mind that, in this type of negotiation, you rarely get everything you want, but you never get anything you didn't ask for.

Long-Form MOU

The Long-Form MOU contains far more provisions and goes into greater detail than the Short-Form MOU. It is an adoption of the MOU first adopted by the then-Los Angeles Unified School District Blue Ribbon Oversight Committee (BOC – now the School Construction Bond Citizens' Oversight Committee) in 2001 and is used with the permission of the LAUSD BOC. LAUSD is, by far, the largest K-12 District and it has, by far, the largest school construction program in the State. (For the sake of clarity, the LAUSD Committee will be referred to as "BOC" while "CBOC" will be utilized to refer to California CBOCs in general.)

It is highly doubtful if any CBOC will need a MOU this comprehensive, detailed, and lengthy. However, for other CBOCs, the Long-Form MOU can serve as a useful checklist of provisions to consider if they may be useful in their individual situations and, if so, then there is specific language that may be useful for inclusion in their MOU.

Again, CABOC is here to support CBOCs and we encourage any and all interested parties to take advantage of our resources and our highly experienced personnel.

Bylaws

CABOC recommends that, consistent with the way that virtually all Bylaws are constructed, adopted, and utilized, that the CBOC Bylaws be a totally internal CBOC document; in other words, the District and District Board have no role whatsoever in the preparation, adoption, or modification of the Bylaws.

However, it is extremely important that the Bylaws be consistent with the MOU as well as all statutes and other legal, regulatory, and contractual requirements.

The Bylaws should be considered, and prepared, as the “operating manual” as to how the CBOC will work:

- Officer positions, responsibilities, how they are selected, terms of office, timing of elections
- Committees and their functions and how members are selected
- Frequency of meetings, how agendas are structured; distribution of agenda packages, meeting notices
- Member attendance standards and the process for members that do not meet them
- Other items as the CBOC membership shall determine

Important Lessons That Other CBOCs Can Learn From The LAUSD BOC Experience

For decades leading up to the mid-1990’s, the Los Angeles Unified School District (LAUSD), the largest in California with approximately 10% of the total K-12 student population, had been encountering significant student growth without the ability to increase its capacity to handle the larger school population, maintain its existing facilities, or respond to opportunities to introduce new pedagogies. The resulting overcrowding and year-around school calendar was seen as a major contributing factor in reduced student performance, exit of higher-income families from LAUSD, increased classroom management issues, discipline problems, and poor teacher and support staff morale.

In 1996, LAUSD attempted to pass its first SCB issue in decades, but narrowly missed reaching the required pre-Prop. 39 two-thirds majority. After working with a professional campaign consultant and a pollster, LAUSD decided that stepping up its game by adding the BOC would provide the necessary margin for success – an evaluation which, combined with other measures, proved correct, and Proposition BB passed.

This made LAUSD one of the first educational entities nationwide to have a CBOC. The LAUSD BOC served as a model for the CBOC provision in Prop. 39 in 2000; many elements of Prop. 39 and its implementing State statutory language can be traced, some word-for-word, back to Measure BB and its implementing documents.

The LAUSD Board saw the need for an independent BOC as so important to the passage of Measure BB that the plan adopted for the BOC prior to the election provided for the members of the BOC to be selected and appointed by independent external stakeholder organizations, including:

- American Institute of Architects, Los Angeles Chapter
- Associated General Contractors of California, Los Angeles District
- California Congress of Parents, Teachers, and Students: the representative to be appointed jointly by the Tenth District and the Thirty-First District
- City of Los Angeles Controller
- City of Los Angeles Mayor
- County of Los Angeles Auditor-Controller (or delegate) by the Los Angeles County Board of Supervisors
- Los Angeles Area Chamber of Commerce
- Los Angeles County Federation of Labor AFL-CIO
- Structural Engineers Association of Southern California².

However, the same problems that led to the failure of the previous bond measure were still problems. LAUSD was seen as significantly mismanaging a highly visible major project originally known as Belmont Learning Center (now the Edward R. Roybal Learning Center)³. Construction was well underway before it was determined that school buildings were being built over a methane/hydrogen sulfide-producing former oil field that should have been tested – but wasn't because the responsible district officials were concerned that the required field research would disclose that there was a problem. When that – and many other problems with Belmont – were finally publicized, the project had to be halted mid-construction and remained half-built for years. Some of the Belmont structures had to be torn down and mitigation methodologies for the remaining structures implemented, at great one-time and continuing expense. (Ironically, if the required testing had been conducted, it would have revealed that it would have been perfectly

² Board Of Education Of The City Of Los Angeles, January 27, 1997 Board Of Education Report No. 2 The Board of Education adopts as shown below the item submitted by the Superintendent in the following attached communication dated January 13, 1997: FACILITIES SERVICES DMSION (sic) NO. 2 (1)-2 “Establishing a nine member, Blue Ribbon Citizen's Oversight Committee for expenditure of proceeds from April 1997 school repair bonds, with certain understanding; directing Superintendent to establish procedures for the timely submission of information to the Citizen's Oversight Committee to facilitate committee's review of local bond expenditures,” [BOE_Report_No._2_and_Minutes_1-27-97.pdf \(laschools.org\)](#)

³ California State Legislature, Joint Legislative Audit Committee, *Preliminary Report Regarding State Allocation Board Funding of the Los Angeles Unified School District's Belmont Learning Complex*, July 22, 1998, <https://files.eric.ed.gov/fulltext/ED433678.pdf>

safe to construct the buildings – without mitigations – where the outdoor athletic facilities were planned and the outdoor athletic facilities shifted to where the buildings were placed.)

The well-publicized Belmont problems resulted in a legal action⁴ which resulted in a preliminary injunction stating, “Defendants (LAUSD et al) ... are hereby enjoined and restrained ... from ... executing ... the proposed ... Agreement ... unless and until the District allows review ... by the Blue Ribbon Oversight Committee...,” in essence requiring that the BOC be provided the opportunity to review all proposed allocations of Proposition BB funds for construction projects before they were presented to the Board of Education.

LAUSD wisely decided that a powerful BOC reporting to the public that improvements were being made was vital to its success – and that improvements had to be made, quickly and effectively. The BOC leadership, recognizing this opportunity, was able to leverage this situation to work with a Board President and Superintendent who saw the value of a powerful BOC and were very willing to agree to the details of the MOU.

By rapidly staffing its Facilities Services Division with highly-competent professionals, who were given the power to totally change LAUSD’s methods of planning and managing projects, there was real progress that could be reported to the public by the independent – and powerful – BOC. This was a major contribution to the passage of the second ballot measure, Measure K in 2002 and four subsequent Prop. 39 SCBs – based primarily by the public’s evaluation of LAUSD’s performance in executing the prior SCBs, including as reported to them by the LAUSD BOC.

As a result, the LAUSD CBOC has a very comprehensive MOU that grants it great powers and responsibilities in an enforceable contract – which the CBOC has had to utilize, with success.

The MOU and Bylaws are accessible at:

<https://www.laschools.org/bond/>

⁴ *Day Higuchi, et al. v. Los Angeles Unified School District, et al.*, Los Angeles Superior Court Case No. BC 169554, May 2, 1997.