

THOMAS A. RUBIN, CPA, CMA, CMC, CIA, CGFM, CFM
2007 Bywood Drive
Oakland, California 94602-1937
(213) 447-6601
e-mail: tarubin@earthlink.net
Licensed by the California Board of Accountancy

OAL Reference Attorney Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814-4339
Via e-mail: staff@oal.ca.gov

June 26, 2023

Education Audit Appeals Panel
c/o Martin Vazquez
Regulations Coordinator Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814
Via: e-mail: mvazquez@eaap.ca.gov

Re: Emergency Topic: Audits of K-12 Local Education Agencies – Fiscal Year 2023-24

To whom it may concern:

On behalf of the California Association of Bond Oversight Committees (CABOC), I am forwarding our proposed additions to 2023-24 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, Appendix A: Local School Construction Bond Audits.

CABOC has become very concerned about a large number of problems that have taken place in the Prop. 39 School Construction Bond program, including many major allegations of fraud, waste, and abuse¹ with includes many instances of issues that were evidently not comprehended by the district's auditors' scope. We regard our proposed additional audit work program tests as both specifically required to fulfill the requirements of the Education Code (Ed Code) and Government Audit Standards as established by the U.S. General Accountability Office. The State of California should specifically inform both K-12 districts and their auditors of the specific statutory audit requirements.

¹ CABOC, "Abuse, Fraud and Waste," [Poor Management Practices - California Association of Bond Oversight Committees](#)

We propose the following additions to topic B., Performance Audit Procedures, following the existing items B.1.-4. For ease of review, for each proposed test to be added below, the citations to the Education Code [Ed Code] are shown.)

B. Performance Audit Procedures

5. For Prop. 39 (paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution) School Construction Bond ballot measures enacted by the electorate during the audit period (or for ballot measures previously enacted but not then tested), was the maximum *ad valorem* tax rate calculated in compliance with Ed Code §15268:
 - a. Not exceed \$30 per year per \$100,000 valuation (without special permission)? (Note: This requirement applies at the time of bond issuance. If, for example, this test was met when the bonds were issued but, in a subsequent period, the total *ad valorem* valuation decreased and the *ad valorem* rate was increased to produce the funding required to satisfy the debt service funding required by the bond indenture, there is not a violation.)
 - b. If the initial tax rate exceeds this, was the proper variance approved by the State Board of Education?
6. For Prop. 39 School Construction Bond ballot measures enacted by the electorate during the audit period (or for ballot measures previously enacted but not then tested), was the total allowed bond value in compliance with Ed Code §15270:
 - a. Not exceed 2.5 percent of the taxable property of the district (without special permission)? (Note: This requirement is applied at the time of bond issuance. If, subsequently, total *ad valorem* valuation was to decrease to under 2.5 percent, there is not a violation.)
 - b. If the initial total allowed bond value exceeded this, was the proper variance approved by the State Board of Education?
7. For Prop. 39 School Construction Bond ballot measures enacted by the electorate during the audit period (or for ballot measures previously enacted but not then tested):
 - a. Was there a list of the specific school facilities projects to be funded and certification that the school district board or county board of education had evaluated safety, class size reduction, and information technology needs in developing that list? (California Constitution, Article XIII A, Section 1. (b) (3) (B))
 - b. Was the ballot printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purpose? (Ed Code §15272)

8. For Prop. 39 School Construction Bond ballot measures enacted by the electorate during the audit period (or for ballot measures previously enacted but not then tested):
 - a. Did the governing board of the of the school district establish and appoint members to an independent citizens' oversight committee (CBOC) within 60 days of the date that the governing board entered the election results on in the minutes? (Ed Code §15278 (a))
 - b. Were the expenses of the CBOC funded entirely from non-bond funds (Ed Code §15280(a)(1))
 - c. Does the CBOC have at least seven members, including:
 - i. One member active in a business organization representing the business community located within the school district? (Ed Code §15282 (a) (1))
 - ii. One member active in a senior citizens' organization? (Ed Code §15282 (a) (2))
 - iii. One member active in a *bona fide* taxpayers' organization? (Ed Code §15282 (a) (3))
 - iv. One member who is a parent or guardian of a child enrolled in the school district? (Ed Code §15282 (a) (4))
 - v. One member who is both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council? (Ed Code §15282 (a) (5))
 - vi. Are all appointments to the CBOC for a minimum term of two years? (Ed Code §15282 (a))
 - vii. Has any CBOC member:
 - a. Served longer than three consecutive terms (without special permission) (Ed Code §15828 (a))?
 - b. If any CBOC members have served longer than three consecutive terms, was the proper variance approved by the State Board of Education?
 - viii. Does any CBOC member have prohibited conflict of interest (Ed Code §15282 (b)):
 - a. Is an employee or official of the school district?
 - b. Is a vendor, contractor, or consultant of the school district?
 - c. Other prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code?

- xi. As to proceeds of sales of school construction bonds (Ed Code §15146(g)):
 - a. Other than bond premiums, been deposited in the county treasury to the credit of the building fund of the school district?
 - b. Bond premium and accrued interest received from the sale of bonds deposited in the interest and sinking fund of the school district?
9. Open Meetings and Records (Ed Code §15280 (b) except as specifically otherwise noted):
 - a. Does the CBOC meet regularly?
 - b. Are the meetings open to the public?
 - c. Are meetings noticed to the public in the same manner as the proceedings of the governing board of the district (Brown Act/California Open Meetings Act)?
 - d. Does the CBOC issue regular reports on the results of its activities at least once a year?
 - e. Does the CBOC actively review and report on the proper expenditure of taxpayers' money for school construction?
 - f. Are the minutes of the CBOC meetings, documents received, and reports issued a matter of public record and available on a web site maintained by the district? (Ed Code §15278 (b))
10. Financial and Performance Audit Reports:
 - a. Has the district submitted the annual independent financial and performance audit reports to the CBOC at the same time they were submitted to the school district, no later than March 31 (of the calendar year following the end of the fiscal year audited)? (Ed Code §15286)
 - b. Has the district provided the CBOC responses to any all findings, recommendations, and concerns addressed in the annual, independent financial and performance audits? (Ed Code §15280 (a) (2))

CABOC also recommends that the following narrative guidance for compliance performance auditors be included as part of the updated revised Appendix A or elsewhere in the Audit Guide:

Auditors should be aware of other actions and conditions that may rise to a requirement for inclusion in the compliance audit report. There are some known actions of K-12 and CC districts that can be considered as violations of some of the above requirements, but would be subject to other interpretations and, since there is no case law on point, determining if these potential actions would constitute reportable matters is a matter for the auditor's determination.

For example, there have been districts that have issued Prop. 39 bonds without establishing a CBOC – indeed, districts that have gone years without ever establishing a CBOC – which appears to be a reportable finding.

There are also cases where a district has “fired” CBOC members mid-term (prior to the end of their mandatory minimum two-year term) and others where the district has disestablished entire CBOCs and started over with a newly constituted CBOC with different members. A strict reading of Ed Code §15282.(a), which provides that CBOC members “... shall serve for a minimum term of two years ...” could conclude that the term of a member cannot be terminated for any reason other than no longer being in compliance with the statutory requirements (such as becoming an employee of the district or a district contractor), but the district could argue that the member had poor attendance and needed to be replaced by a new member that would actually attend meetings so that the CBOC could perform its statutory responsibilities. Even if there is strong evidence that the member was fired because the district believed that the member was doing more oversight than the district wanted, it is likely that the district would argue that it has the power to terminate the member. In the absence of case law, regulations, or other valid precedential documents, it appears that each auditor will have to form its own judgement on such matters.

Similarly, Ed Code §15284.(a) provides a legal course of action against districts that do not fulfill the statutory requirements, including “(4) The governing board of a school district or community college has willfully failed to appoint the citizens’ oversight committee in violation of the requirements of Section 15278,” it should be anticipated that the judicial system would likely allow districts reasonable discretion in meeting this requirement. A total failure to establish the CBOC would clearly appear to be reportable, but if the “senior citizen” member died unexpectedly and there was a gap of two months while the district recruited and formally appointed the replacement “senior citizen” member, it is questionable if any court would find a violation. If the “taxpayer organization” was unfilled for multiple years, this might appear actionable, but the district could argue that it had been attempting to find a replacement for years, but had failed – which could move the decision from a question of law to a question of fact. (Did the district really try hard enough? Should the auditor report on the district’s recruitment process?).

Another item requiring the application of judgment can be found in Ed Code §15280.(a)(1), which states that 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 publicize the conclusions of the citizens’ oversight committee.” How should “necessary” be interpreted in the above? If the CBOC decides it needs its own dedicated staff responsible only to the CBOC to do its work, is this “necessary?” If the CBOC decides that it needs its own independent legal counsel because using the district general counsel or bond counsel means it would be relying on legal counsel that is ethically required to follow the interests of its client (the district), rather than those of the CBOC, is this “necessary?”

There has been no shortage of widely reported instances of fraud, waste, abuse, and improper payments involving Prop. 39 funds; auditors need to be alert to the situations at K-12 districts using such funds in making their determinations as to what compliance tests to apply and what findings to report.

Finally, we recommend that the review of the minutes of the CBOC meetings be included as a standard Prop. 39 financial and performance audit work step, similar to how standard audit procedure is to review the minutes of the meetings of the governing board of the entity being audited.

If there are any questions, please do not hesitate to call on me at any of the contact points in the letterhead above.

Respectfully submitted,

Tom Rubin

Thomas A. Rubin
CABOC Board of Directors

Revision 8.23.23