

Draft Meeting Minutes of November 30, 2017

Members Present: Stephanie Morris Sheryl Drinkwater Sean McMurray Carla Schneiderman
Alejandro Pimentel

Staff Members Present: Timothy White

Presenter: Marilyn Cleveland, Esq. Dannis Woliver Kelley

1. **Call to Order:** The meeting was called to order at 6:00 PM.
2. **Introduction of Members:** Members introduced themselves and gave a brief background of their school or committee related experience.
3. **Presentation from Dannis Woliver Kelley: The Role of The Citizens' Construction Bond Oversight Committee**
 - Marilyn Cleveland from DWK gave a presentation on the Role of the CBOC. The presentation is included as an appendix to the minutes.
Key Points included:
 - a. Proposition 39 requirements
 - b. CBOC scope, responsibilities, selection of members, and information a CBOC needs to perform overall duties
 - c. Use of Bond Funds: including permissible uses, operating vs. capital expenses
 - d. CBOC Audit Functions: CBOC is responsible for reviewing financial and performance audits. It also provides an annual report to the public.
 - e. CBOC Legal Compliance: Issues related to Brown Act and ethical compliance were discussed
4. **Meeting Schedule:** Director White responded to a question regarding the meeting schedule. He stated that the Committee would meet quarterly. Meetings for site visits could occur in between quarterly meetings.
5. **Public Comments:** There were no public comments.
6. **Nomination and Selection of Offices:** This item was postponed to the next meeting.
7. **Establish Meeting Schedule:** This item was postponed to the next meeting.
8. **Next Scheduled Meeting Date:**
 - The next meeting is tentatively scheduled for January 11, 2018.
9. **Adjournment:**
 - The meeting adjourned at 7:17PM.



DANNIS WOLIVER KELLEY

Attorneys at Law

THE ROLE OF THE CITIZENS' CONSTRUCTION BOND OVERSIGHT COMMITTEE

BERKELEY UNIFIED SCHOOL DISTRICT
Citizens' Construction Bond Oversight Committee

November 30, 2017

Presented by:

Marilyn J. Cleveland

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Proposition 39 Requirements

1. Citizens' Construction Bond Oversight Committee (CBOC)
2. Uses of Bond Proceeds
3. Audit Requirements
4. Cause of Action for Violation of Prop. 39
5. Legal Compliance for CBOC Members and Meetings

Citizens' Construction Bond Oversight Committee

- What Is Scope of CBOC Authority?
- Who Should Serve on CBOC?
- What Technical Assistance Must Be Provided to CBOC?
- What Information Does the CBOC Need?

Forming and Managing a Citizens' Construction Bond Oversight Committee

- After bonds are approved at a Prop. 39 election, the governing board shall establish an independent citizens' bond oversight committee ("CBOC") of the District within 60 days from when the Board certifies the election results (Educ. Code, § 15278(a))

Purposes of the CBOC

(Ed Code 15278)

- To inform the public concerning the expenditure of bond revenues from Measure I (2010), Measure A, (1992) and Measure AA (2000);
- Actively review and report on proper expenditure of taxpayers' money for school construction
- Advise public re: whether District has met CA Constitutional requirements – which are . . .



CA Constitutional Requirements

- Ensuring bond revenues are expended only for construction, reconstruction, rehabilitation, or replacement of school facilities. (Article XIII A, Section 1(b)(3) of the California Constitution.)
- Ensuring no funds are used for any teacher and administrative salaries or other school operating expenses. (Article XIII A, Section 1(b)(3)(A) of the California Constitution.)



Other Sources of CBOC Authority

- Education Code Sections 15278-15282
 - Composition; terms; duties; accountability; reports
- CBOC Bylaws
 - Meetings, purpose, members, powers, actions and reports, terms, vacancies, officers' duties
 - Amendments to committee bylaws only by Board action

CBOC Responsibilities

- Review annual, independent financial and performance audits required by Prop. 39
- Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with the law
- Review deferred maintenance proposals or plans
- Prepare annual and final reports to the Board and public

CBOC Responsibilities (Cont.)

- Review District efforts to maximize bond revenues through implementation of cost containment measures
 - Professional fees
 - Site preparation
 - Joint use of facilities
 - Design efficiencies
 - Reusable facilities plans

CBOC Activities

- CBOC need not even be considered advisory to the Board
- Board may prefer to establish separate facilities or bond advisory groups
- Board has flexibility in what it asks or allows the CBOC to address
- Board may develop written guidelines for CBOC to clarify to all parties what is expected

CBOC Activities (Cont.)

- **Powers Reserved for the District:**

- Determining how bond funds may be spent (within the parameters of Bond Project List)
- Determining project timing, terms, priorities
- Timing for issuance of bonds

Selection of CBOC Members

- Seven members pursuant to bylaws
- Represent the following:
 - Business organization
 - Taxpayers organization
 - Senior citizens organization
 - Parents and guardians
 - Parents active in support of the District, such as a member of the PTA or school site council

Selection of CBOC Members

- Serve for 2-year term with maximum of three consecutive terms
- **Shall *not* include:**
 - Any District employee or official
 - Any District vendor, contractor or consultant
 - Any person with a conflict of interest

Technical Assistance to CBOC

- District's Board/Staff to provide technical and administrative assistance to CBOC, such as:
 - Website information posting
 - Brown Act agendas and minutes
 - Financial and progress reports
 - Submit independent financial and performance audits at same time as to District, no later than March 31st.
 - Respond to findings, recommendations and concerns addressed in audits within 3 months

Information the CBOC Needs

- Bond project list
- Bond program financial statements
- Reports on current projects
- Annual fiscal audit of bond funds
- Annual performance audit of bond projects
- Opportunity to visit project sites
- Information regarding District cost containment measures

Uses of Bond Funds



Permissible Uses of Bond Proceeds

- Construction, rehabilitation or replacement of school facilities
- Furniture and equipment
- Acquisition or lease of real property
- Limited to project list adopted by Board before the election
 - Ballot measure is like a contract with the voters
 - Projects need not be listed on short ballot measure

Operating vs. Capital Expenses

- Despite prohibition on use for school operating expenses, bond funds may pay District employee salaries to the extent employees are engaged in construction-related services for bond-funded projects
 - Overseeing construction progress
 - Accounting that facilitates timely completion of the construction project
 - Costs incidental, but directly related, to bond-funded projects



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Operating vs. Capital Expenses (Cont.)

- Other permissible expenditures:
 - Construction labor and materials costs;
 - Professional fees (e.g. architects, construction managers, attorneys) and
 - Other costs directly connected to real property acquisition and improvement (e.g. environmental review, relocation costs, temporary moves)



CBOC Audit Function

- CBOC has responsibility to review District's annual audits of the bond and report to the public
 - Fiscal audit
 - Performance audit

Cause of Action

- To restrain and prevent expenditure of funds
- Failure to comply with Prop. 39 expenditure limits or to appoint a CBOC
- By any citizen liable to pay the tax

CBOC Legal Compliance

- Brown Act compliance
- Ethical compliance

Intent of the Brown Act

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is good for them not to know. The people insist on remaining informed so that they may retain control over the instruments they have created

(The Ralph M. Brown Act, Gov. Code, § 54950.)

Intent of the Brown Act (Cont.)

- To keep the public informed of the actions, debates and views of locally elected representatives; and
- To provide the procedural framework for local legislators to meet, debate, act and listen collectively to their constituents

Legislative Body

- Governing body or other body created by state or federal statute, including:
 - Commission
 - Committee
 - Board
- Whether:
 - Permanent or temporary
 - Decision-making or advisory
 - Established by charter, ordinance, resolution, or formal action of the Board (Gov. Code, § 54952.)
- Oversight Committee subject to Act per Education Code section 15280

Meetings Defined

Any congregation of a **majority** of members of a legislative body at the **same time and place**, including teleconference locations, **to hear, discuss, deliberate or take action** upon any item within the subject matter jurisdiction of the legislative body

Meetings

As of January 1, 2009, a majority of the members of a Board shall not, outside a noticed meeting, use a **series of communications** of any kind, directly or through **intermediaries** or **technological devices**, to discuss, deliberate, or take action on any item of business that is within the Board's jurisdiction

(Gov. Code, § 54952.2.)

Meetings (Cont.)

“Direct communication, personal intermediaries, or technological devices” include:

- Telephone, e-mail, internet, instant messaging, texts
- Social media, blogs
- Communication through an intermediary

Common Scenarios of Which to Be Aware

- E-mail messages in which majority is copied
- Consecutive conversations through intermediary to poll the committee
- Telephone conference calls involving a majority of the committee
- Internet Chat Rooms

Meetings (Cont.)

- Definition of meeting specifically excludes:
 - Individual contacts, communications or telephone conversations between a Committee member and "any other person" (including another Committee member) that do not constitute discussion, deliberation or taking action on district business

Meetings (Cont.)

- Meetings are open to the public with a posted agenda and minutes
- Teleconferencing must be from a publicly accessible location; at least a quorum must be within District boundaries
- Agenda must be posted and public able to address CBOC at each location

(Gov. Code, § 54953(b)(3).)

Exceptions to Agenda Requirements

- Emergency (majority vote)
- Need to take immediate action arose after agenda posted (2/3rds vote, unanimous if less than 23rds of committee present)
- Responding to questions
- Asking for clarification
- Making a brief announcement or report of activity

Public Rights

- Any person attending may videotape unless disruptive
- Public may comment on agenda items before or during consideration of the item
- Time must be set aside for public comment on any other matters under the Committee's jurisdiction
- The Committee may place reasonable time limitations on particular topics or speakers

Ethics Compliance

- CBOC is subject to ethics doctrines:
 - ✓ No participation in District decision making, or attempt to use influence on construction program contracts in which member has a financial or personal interest or prospective interest
 - ✓ No bidding on District construction project by company of Committee member
 - ✓ Place District interests above personal interests
 - ✓ Notify District if conflict concern arises



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