

**PROPOSITION 39
ALTERNATIVE GENERAL OBLIGATION BOND
AUTHORIZATION PROCEDURES
PANACEA OR PANDORA'S BOX?**

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1. INTRODUCTION

Proposition 39, the "Smaller Classes, Safer Schools and Financial Accountability Act," enacted by the voters of the State of California on November 7, 2000, provides, a new alternative procedure for the authorization of the issuance of general obligation bonds to finance school facilities (the "55% Vote Procedures"). This alternative procedure authorizes the approval of a proposition to authorize the issuance of general obligation bonds by the affirmative vote of 55% of the voters of a school district voting on such proposition instead of the 2/3 affirmative vote requirement required under pre-existing law (the "2/3 Vote Procedures"). This lower voter approval authorization comes with "strings attached" which include mandated requirements for financial accountability and taxpayer oversight. Despite the attractiveness of the 55% vote, school boards and district staff should be aware of the price to be paid in exchange for the 55% vote.

The 55% Vote Procedures and the related accountability requirements are contained in (a) Proposition 39 itself which amends Section 1 of Article XIII A and Section 18 of Article XVI of the California Constitution and (b) Assembly Bills 1908 (Chapter 44 of the Statutes of 2000) and 2659 (Chapter 580 of the Statutes of 2000) which together enact the "Strict Accountability in Local School Construction Bonds Act of 2000" (Ed. Code § 15264 et seq.) (the "Accountability Act").

2. THE 2/3 VOTE PROCEDURES

Under pre-existing law general obligation bonds may be authorized to be issued to finance the acquisition or improvement of real property, including real property to be used for school facilities, upon the affirmative vote of 2/3 of voters voting on such a proposition (the "2/3 Vote Procedures").¹

3. HISTORY OF BOND AUTHORIZATIONS PURSUANT TO THE 2/3 VOTE PROCEDURES

From 1999 through May of 2000, school districts in California submitted 467 ballot measures to their voters pursuant to the 2/3 Vote Procedures seeking the authorization to issue general obligation bonds. Of those ballot measures, 273 (approximately 58.5%) received an affirmative 2/3 vote. Of the 194 ballot measures which failed, only 30 (approximately 6.4%)

¹ Cal. Const., art. XIII A, § 1(b)(2)

received less than a 55% affirmative vote. Based solely on the results of these elections, one may conclude that over 90% of these elections would have been successful had the 55% vote requirement been in effect when these elections were held.

4. WHAT MAY BE FINANCED PURSUANT TO THE 55% VOTE PROCEDURES?

The 55% Vote Procedures now authorize the levy of an ad valorem tax in excess of 1% of the full cash value of the property taxed to pay interest and redemption charges on a bonded indebtedness incurred by a school district for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities (the "Authorized Facilities") if such indebtedness is approved by the affirmative vote of 55% of the voters voting on such a proposition² The furnishing and equipping of school facilities may not be financed pursuant to the 2/3 Vote Procedures unless it can be determined that such furnishings or equipment are improvements to real property.

Under the 55% Vote Procedures, the governing board is required to establish a list of specific school facilities projected to be funded (the "Authorized Facilities List") and certify that the governing board has evaluated safety, class size reduction and information technology needs in developing the Authorized Facilities List.³ Nothing in the 55% Vote Procedures requires, however, that only those projects which are found to promote the safety, class size reduction or information technology needs of the school district may be funded from the proceeds of bonds approved pursuant to the 55% Vote Procedures or that priority in funding must be given to such projects.

5. WHEN MAY AN ELECTION BE HELD PURSUANT TO THE 55% VOTE PROCEDURES?

A ballot proposition may be presented pursuant to the 55% Vote Procedures only at a primary [March of even numbered years] or general election [November of even numbered years], a regularly scheduled local election or a statewide special election.⁴ Although not defined in the Accountability Act, based upon existing definitions in the Elections Code a "regularly scheduled local election" reasonably appears to be a municipal, county or district election, the specific time for which is prescribed by law where the jurisdictional boundaries of such city, county or district overlap at least in part the jurisdictional boundaries of the school district presenting the ballot proposition. A regularly scheduled local election would, therefore, include any regular election of such a public agency to elect members of such agency's governing board. On the other hand, a regularly scheduled local election would not include a special election called by such a public agency.

Under the 2/3 Vote Procedures, an election on the question of authorizing the issuance of general obligation bonds may be presented on any Tuesday during the year other than day before, day of or day after a state holiday.

² Cal. Const., art. XIII A, § 1(b)(3)

³ Cal. Const., art. XIII A, § 1(b)(3)(B)

⁴ Ed. Code § 15266(a)

6. WHAT IS THE LIMIT ON THE AUTHORIZED BONDED INDEBTEDNESS UNDER THE 55% VOTE PROCEDURES?

The total amount of bonds which may be issued under both the 2/3 Vote Procedures and the 55% Vote Procedures shall not exceed 1.25% of the taxable property of the applicable school district or 2.5% of the taxable property of the applicable unified school district.⁵ However, under the 55% Vote Procedures, the bonds may only be issued if the tax rate levied to pay debt service on bonds authorized to be levied at a single election would not exceed \$30 per \$100,000 of taxable property of the applicable school district⁶ or \$60 per \$100,000 of taxable property of the applicable unified school district⁷ when assessed valuation is projected by the school district to increase in accordance with Article XIII A of the California Constitution. The practical effect of this tax rate limitation is to reduce the maximum potential bond authorization by approximately 50%.

7. WHAT ARE THE ACCOUNTABILITY REQUIREMENTS APPLICABLE TO THE 55% VOTE PROCEDURES?

A. Performance Audit

The governing board must conduct an annual, independent performance audit to ensure that funds have been expended only on the specific projects on the Authorized Facilities List.⁸

B. Financial Audit

The governing board must conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of the bond proceeds have been expended for Authorized Facilities.⁹

C. Citizens' Oversight Committee

The governing board is required to establish and appoint an independent citizen's oversight committee (the "Committee") within 60 days of the date that the governing board certifies the results of the election.¹⁰

- (1) Composition of the Committee. The Committee shall consist of at least seven (7) members to serve for a term of two (2) years without compensation and for no more than two (2) consecutive terms. The Committee must include:

⁵ Gov. Code §§ 15102, 15106, 15268 and 15270(a)

⁶ Gov. Code § 15268

⁷ Gov. Code § 15270(a)

⁸ Art. XIII A, § 1(b)(3)(C)

⁹ Art. XIII A, § 1(b)(3)(D)

¹⁰ Ed. Code § 15278(a)

- a. One member who is active in a business organization representing the business community located within the school district;
- b. One member active in senior citizen's organization;
- c. One member who is the parent or guardian of a child enrolled in the school district; and
- d. One member who is both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization.¹¹

The Committee may not include any employee or official of the school district or any vendor, contractor, or consultant of the school district.¹²

(2) Purpose and Activities of the Committee. The purpose of the Committee shall be to inform the public concerning the expenditure of the bond proceeds. The carrying out this purpose the Committee shall:

- a. Actively review and report on the proper expenditure of taxpayers' money for school construction;
- b. Advise the public as to whether the school district is in compliance with the requirements of Article XIII A, Section 1(b)(3); and
- c. Convene to provide oversight for, but not limited to:
 - Ensuring that bond revenues are expended only for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities;
 - Ensuring that no funds are used for any teacher or administrative salaries or other school operating expenses.¹³

The Committee is authorized to engage in any of the following activities in furtherance of its purpose:

- a. Receive and review copies of the annual performance audit;
- b. Receive and review copies of the annual financial audit;

¹¹ Ed. Code § 15282(a)

¹² Ed. Code § 15282(b)

¹³ Ed. Code § 15278(b)

- c. Inspect school facilities and grounds;
- d. Receive and review copies of any deferred maintenance proposal or plans developed by the school district; and
- e. Review efforts by the school district to maximize bond revenues by implementing cost saving measures, including, but not limited to;
 - Mechanisms designed to reduce the cost of professional fees;
 - Mechanisms designed to reduce the costs of site preparation;
 - Recommendations regarding the joint use of core facilities;
 - Mechanisms designed to reduce costs by incorporating efficiencies in school site design; and
 - Recommendations regarding the use of cost-effective and efficient reusable plans.¹⁴

The Committee shall at least annually issue regular annual reports of the results of its activities.¹⁵

- (3) Governing Board Support of the Committee. The governing board shall provide the Committee with (a) any necessary technical assistance and administrative assistance in furtherance of the Committee's purpose and (b) sufficient resources to publicize the conclusions of the Committee. No bond funds may be used to pay any of these expenses.¹⁶
- (4) Meetings of and Documents Provided to the Committee. All Committee proceedings shall be open to the public and shall be subject to the provisions of the Ralph M. Brown Act. All documents received by the Committee and reports issued by the Committee shall be a matter of public record and be made available on an Internet website maintained by the governing body of the school district.¹⁷

¹⁴ Ed. Code § 15278(c)

¹⁵ Ed. Code § 15280(b)

¹⁶ Ed. Code § 15280(a)

¹⁷ Ed. Code § 15280(b)

8. HOW ARE THE ACCOUNTABILITY REQUIREMENTS ENFORCED?

A citizen residing in a school district who is assessed and liable to pay an ad valorem tax on real property within such district or who has paid such a tax within one (1) year before the commencement of an action may bring a "School Bond Waste Prevention Action" to obtain an order restraining and preventing an expenditure of the proceeds of the bonds of such school district which were authorized pursuant to the 55% Vote Procedure.¹⁸ Such an order will be granted if it appears by the complaint or affidavits that any of the following conditions are present:

- A. An expenditure of bond proceeds is for a purpose other than for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities;
- B. The expenditure is not in compliance with Article XIII A, Section 1(b)(3);
- C. An expenditure in violation of Article XIII A, Section 1(b)(3) will be made or continue to be made during the litigation that would produce waste or great irreparable injury; or
- D. The governing board of the school district has willfully failed to appoint the Committee.

The accountability requirements contained in the Accountability Act do not apply to bonds authorized pursuant to the 2/3 Vote Procedure.

If such an order is obtained, the court may award attorney's fees to the plaintiff.¹⁹

Finally, the legislature declared its intention that upon receipt of allegations of waste or misuse of bond funds, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds.²⁰

9. MAY THE 55% VOTE PROCEDURES BE APPLIED TO SCHOOL FACILITIES IMPROVEMENT DISTRICT BOND ELECTIONS?

The School Facilities Improvement District Law (Ed. Code § 15300 et seq.) (the "SFID Law") provides a method for certain school districts to form school facilities improvement districts (an "SFID") consisting of a portion of the territory within such school district and for the issuance of general obligation bonds of such SFID to finance school facilities.²¹ A school district is eligible to use the SFID Law to form an SFID if such school district has a community facilities district that has as one of its purposes the construction of school facilities within a portion of the territory of the school district (a "School Facilities CFD").²²

¹⁸ Ed. Code § 15284(a)

¹⁹ Ed. Code § 15284(d)

²⁰ Ed. Code § 15288

²¹ Ed. Code § 15300

²² Ed. Code § 15301(a)

The SFID Law allows an eligible school district to form an SFID which includes all of the territory within the boundaries of the school district that is not located in the boundaries of a School Facilities CFD.²³

Once formed, the governing board of the school district, acting as the governing board of the SFID,²⁴ may provide for and call a special bond election within the SFID to, or may at the next statewide general election, submit to the voters of the SFID a proposition whether or not an indebtedness of the SFID shall be incurred and bonds issued to represent such indebtedness.²⁵

Currently the provisions of both Proposition 39 and the SFID Law prohibit the use of the 55% Vote Procedure by an SFID. Proposition 39 amended Section 1(b) of Article XIII A of the California Constitution to provide that the 1% limitation on the maximum amount of any ad valorem tax on real property shall not apply to ad valorem taxes to pay the interest and redemption charges on bonded indebtedness incurred by a school district approved by 55% of the voters of the district voting on the proposition. The SFID Law provides that a proposition whether or not to incur a bonded indebtedness of an SFID shall be deemed approved upon approval by 2/3 of the votes cast by voters voting on the proposition.²⁶

10. ELECTION CALENDAR

The following is a generic calendar of the activities that will be involved in a general obligation bond election using either the 55% Vote Procedures or the 2/3 Vote Procedures:

Date

Not less than 88 days

Not less than 88 days prior to the election date.

Not less than 88 days prior to the election date.

Not less than 88 days

Action

School district governing board adopts Resolution Ordering Election (the "Election Resolution") pursuant to 55% Vote Procedures (requires 2/3 vote) of governing board.

School district governing board adopts resolution requesting consolidation of election ("Consolidation Resolution") if the election is to be held on a statewide election date or consolidation is otherwise desired

Final day for school district to delivery the Election Resolution to the County Superintendent of Schools

Final day for school district to deliver the

Authority

Ed. Code §§ 5322,
15100

Ed. Code § 5322

Ed. Code § 5322

Ed. Code § 5324

²³ Ed. Code § 1530 1(b)
²⁴ Ed. Code § 15327
²⁵ Ed. Code § 15340(a)
²⁶ Ed. Code § 15348

Date

prior to the election date.

Date to be established by the Registrar of Voters

Ten days after the Notice of Election is published. Exact date to be declared by the Registrar of Voters

Ten days after final date for submission of arguments for or against the ballot measure. Exact date to be declared by the Registrar of Voters.

Date to be established by the Registrar of Voters

Date to be established by the Registrar of Voters.

Not more than 40 nor less than 10 days prior to the election date

Action

Election Resolution and Consolidation Resolution to the County Registrar of Voters

Final date for the school district to submit the Tax Rate Statement. This statement is normally prepared by the school district's financial advisor or underwriter.

Final date to submit arguments for or against the ballot measure.

Final date to submit arguments in rebuttal to arguments for or against the ballot measure.

Last date for County Counsel or District Attorney to submit impartial analysis of the ballot measure.

The Registrar of Voters makes all proposed election materials available for public inspection at least ten days prior to printing.

The Registrar of Voters mails the sample ballot and voter materials.

Authority

El. Code §§ 9400-9405

El. Code §§ 9501-9503; 9600,9601

El. Code § 9504

El. Code § 9500 El. Code § 9509

El. Code § 13300

11. CHARTER SCHOOL FACILITIES

As part of Proposition 39, Section 47614 of the Education Code was amended regarding the district's obligations to provide facilities to charter schools. The effective application date of this amendment is either three (3) years after the passage of Proposition 39, (November 8, 2003), or if a school district passes a school bond, prior to that time measure, the next July 1 after the measure passes.

The facilities to be provided should be reasonably equivalent to those for other students in the school district. The facilities should be contiguous, furnished, and equipped and will

remain the property of the school district. The school district will make reasonable efforts to provide the charter school near to where the charter wishes to locate and shall not move the charter school unnecessarily.

The district may charge the charter school a prorata share based on the ratio of space allocated by the school district to the charter school divided by the total space of the District, for those school facilities costs which the school district pays from unrestricted general fund revenues. No charter school should be otherwise charged for the use of its facilities. The District shall not be required to use unrestricted general fund revenues to rent, buy, or lease facilities for the charter schools. Each year the charter school will provide the district with a reasonable projection of the charter school's average daily classroom attendance by in-district students for the following year. The District will allocate facilities based on this projection. If the charter school generates less average daily attendance than predicted, the charter school shall reimburse the District for the over-allocated space as determined by regulation. If the projected average daily attendance is less than eighty (80) for an operating charter or the projected attendance for a charter, the District may deny the facilities request.

The State Department of Education will propose, and the State Board of Education may adopt, regulations implementing this new requirement to provide facilities to charter schools, including but not limited to, defining the terms "average daily classroom attendance," "conditions reasonably equivalent," "in-district students," "facilities costs," as well as defining the procedures for establishing timelines for the request, reimbursement for and provision of the facilities.