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GENERAL OBLIGATION BONDS AND PROPOSITION 39 (55% Local Vote Bonds)

By

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I. PROPOSITION 39 AND COMPANION LEGISLATION - GENERAL OBLIGATION BONDS

On November 7, 2000, California voters approved **Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act** (School Facilities. Fifty-Five Percent Local Vote. Bonds, Taxes. Accountability Requirements). Proposition 39 generally authorizes a school district (“District”), community college district or county office of education, which conducts a general obligation bond election to issue general obligation bonds (“Bonds”) based on a lower voting requirement of 55% of the local vote. This lower voting requirement provides an exception to the existing 2/3 voter approval requirement. However, based on the provisions of Proposition 39 and in conjunction with companion legislation, **Assembly Bills 1908 and 2659**, respectively, a District must comply with various accountability requirements (“Accountability Requirements”), election date and area of election requirements in order to conduct a bond election pursuant to the new 55% vote exception. The nuances of Proposition 39 and the companion legislation, with particular emphasis on election dates, area for elections and the Accountability Requirements, are explored further in this paper and the attachments hereto.

A. Election Dates & Coterminous Boundary Issues. Assembly Bill 1908 limits the available election dates for a Proposition 39 Bond election to certain election dates. The four types of available election dates are a primary election date, a general election date, a regularly scheduled local election date or a statewide special election date. The most confusion relates to what the word “at” means and what is a “regularly scheduled local election.” A concurrent local election with some substantial degree of overlapping as to area is accepted by most parties considering this issue. Total overlap of area without consideration as to where registered voters are located and to what degree they are the same voters seems to be a premature erroneous conclusion. Many available election dates are currently limited to dates when statewide special elections occur and the March and November elections in even numbered years including March and November of 2002. Calendars of events for the March, 2002 and November, 2002 election dates are attached to this paper as **Attachment 1**. However, on an area by area basis, some regularly scheduled local elections may be available as to specific school districts in odd-numbered years desiring to hold Proposition 39/55% Local Vote elections. Such elections may include governing board elections for school districts as well as cities and local

districts such as water districts, parks and recreation districts and other similar agencies.

In this regard, a local election is generally defined in Elections Code Section 328 to include an election of a county, city or district. As to what is a regularly scheduled “local election,” a possible conclusion may be that any such election in March or June of odd-numbered years or April of an even-numbered year may meet this test. Others disagree on this issue even where the area of the two elections are identical. While Elections Code Section 348 defines “regular elections”, the Proposition 39 statutory requirement appears to relate only to local elections that are regularly scheduled, such as for special district board members, as opposed to regular elections or the dates thereof. In this regard, a review of the boundaries of the other local agency concurrently holding an election should be reviewed when making this determination. The purpose would be to see what local elections are occurring on such dates referred to in Elections Code Section 1000 and are the registered voters the same or substantially the same. The area need not be the same as the difference in area may be uninhabited or void of registered voters such as in National Parks areas. Opinions have been expressed by law firms that the areas must be identical and coterminous. We do not agree with such conclusion. This issue needs to be addressed with the school district’s bond counsel based on the specific facts. The more reasoned view is that area of the entity concurrently holding an election must be within the boundaries of the District. However, there is no concurrence as to the extent of the area required to also be within the District. Whatever election date and determination as to boundary areas is made if not coterminous as to registered voters and if not in an even numbered year or on the date of a regular local election, these issues, if any, may be cured by one of more of the three “Validating Acts” enacted in each Legislative Session. Also, there is the option of pursuing a validating action in the local Superior Court. These validation proceedings are utilized to establish the validity of actions by local agencies where statutory ambiguities raise questions of a technical nature. The perceived inconsistencies and deficiencies in AB 1908 could be addressed in such a validation action.

In summary, this is a new area of the law and many law firms are expressing general opinions which may not relate to the facts applicable to a specific school district. School districts should consult with their bond counsel on acceptable/available election dates.

B. Use of Proceeds. Proposition 39 specifies that Bond proceeds may only be utilized for specific purposes. These named purposes are 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. We note that this provision is actually broader than the existing provisions of Education Code Sections 15100 and 15300, *et seq.* because pursuant to the new Bond authorization, the equipping of school facilities with non-fixture furnishings and equipment is specifically authorized. However, in no event may the Bond proceeds be used for other purposes, including teacher and administrator salaries and other school operating expenses.

C. Authorization Amount and Tax Rate Limits. The companion legislation imposes limitations on the amount of Bonds to be authorized pursuant to Proposition 39 based on the projected annual tax per \$100,000 of assessed valuation expected to be levied in order to pay principal and interest on the Bonds. Specifically, Bonds may only be issued if the annual tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution (in the case of indebtedness incurred by an elementary or high school district, at a single election) would not exceed \$30 per year per \$100,000 of taxable property when the assessed valuation is projected by the District to increase in accordance with Article XIII A of the California Constitution. (Emphasis added.) This limit is increased to \$60 per year for unified school districts and is lowered to \$25 per year for community college districts.

D. School Facility Improvement Districts. AB 1908 originally failed to properly deal with school facility improvement districts (“SFID”) which provide for general obligation bond elections in a portion of a school district with boundaries established to exclude Mello-Roos Community Facilities Districts established to fund school facilities for the school district. Because of the importance of SFID’s to certain school districts, including clients of our firm, our firm drafted and proposed to the Coalition for Adequate School Housing (CASH) legislation which would specifically permit an SFID to hold a Proposition 39/55% local vote election and to otherwise utilize the provisions, and be subject to the requirements of, Proposition 39 and the related legislation. SB 1129 (O’Connell) was signed into law by Governor Davis on July 30, 2001, and will become effective on January 1, 2002. Based on the wording of SB 1129, it is our position that school districts can form and call Proposition 39/55% bond elections within an SFID for March, 2002, under the

provisions of the legislation, which will be effective prior to the relevant election date.

E. Accountability Requirements. As mentioned above, Bonds authorized pursuant to a Proposition 39 election are subject to various Accountability Requirements, each of which are discussed below:

1. **List of School Facilities Projects.** Proposition 39 requires that any Bond proposition approved by the voters include a list of the specific school facilities projects to be funded with the Bond proceeds. In preparing this list, the District should provide detailed information regarding the particular projects to be funding with the Bond proceeds. In addition, the District must certify that it has evaluated safety, class size reduction and information technology needs in developing its project list. As this certification should be made on a factual basis, we recommend that the District consider including the factors evaluated either on the project list itself or by separate documentation.
2. **Annual Performance Audit.** Proposition 39 also requires that each year the District's governing board conduct an independent performance audit for the purpose of ensuring that the Bond proceeds have been expended only on the specific projects listed.
3. **Annual Financial Audit.** In addition, each year the District's governing board must conduct an independent financial audit of expended Bond proceeds until all of Bond proceeds have been expended on the specific school facilities projects listed by the District.
4. **Citizen's Oversight Committee.** Assembly Bill 1908 requires the ballots to be printed with a statement that the District will appoint a Citizens' Oversight Committee ("Committee") and the District must appoint a Committee within 60 days of the date that its governing board enters the election results into the minutes. The stated purpose of the Committee is to inform the public

concerning the expenditure of Bond proceeds and to “actively review and report on the proper expenditure of taxpayers’ money for school construction,” ensuring that Bond proceeds are used 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, and to ensure that no Bond funds are used for any teacher or administrative salaries or other school operating expense. The Committee may engage in specified activities in furtherance of its purpose, such as reviewing copies of the annual performance and financial audits, inspecting school facilities and grounds, reviewing copies of deferred maintenance proposals and reviewing District efforts to maximize Bond proceeds by implementing cost-saving measures. We have more fully identified the specific statutory requirements relative to citizens oversight committees, and have included certain recommendations relative to guidelines policies applicable to citizens oversight committees which is set forth in **Attachment 2** to this paper.

F. Bond Waste Prevention Actions. Assembly Bill 1908 also provides that a citizen residing in the District who is assessed and is liable to pay an ad valorem tax on real property within the District or who has paid an ad valorem tax on real property within one year before filing, may file an action against any officer, agent or other person acting on behalf of the District to obtain a restraining order preventing any expenditure of Bond proceeds received by a District pursuant to Proposition 39 under certain conditions. Such conditions consist of the improper expenditure of Bond proceeds, including expenditures that will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury, as well as the willful failure to appoint the Committee. Such actions are given special precedence over all civil matters on the court’s calender, as appropriate, and the rights, remedies and penalties are cumulative to those of other laws. Finally, a court may award attorneys’ fees to the citizen filing the action if a restraining order is issued as a result of the action.

We have included as part of this paper a brief comparison of the general obligation bond statutes as they existed prior to Proposition 39, and the Proposition

39 requirements as are now applicable in **Attachment 3** to this paper. We have also included comparison timelines relative to a two-thirds general obligation bond election and a Proposition 39/55% vote election as part of that Attachment.

II. PROPOSITION 39 - PROVISION OF CHARTER SCHOOL FACILITIES

Proposition 39 and related legislation includes several provisions requiring a District to provide charter school facilities. Specifically, Proposition 39 requires a District to provide each charter school operating in that District sufficient facilities for the charter school to accommodate all of the charter school's in-District students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of that District. The term "operating" is defined to mean either currently providing public education to in-District students, or having identified at least 80 in-District students who are meaningfully interested in enrolling in the charter school for the following year. Proposition 39 specifies that no District is required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students and that the facilities which a District "provides" to charter schools remain District property. The facilities must be contiguous, furnished, and equipped. Furthermore, a District must make reasonable efforts to provide charter schools with facilities near to where the charter school wishes to locate, and cannot move charter schools unnecessarily.

Proposition 39 authorizes a District to charge charter schools a pro rata share (based on the ratio of space allocated by that District to the charter school divided by the total space of that District) of those District facilities costs which that District pays for with unrestricted general fund revenues; however, charter schools "shall not be otherwise charged for use of the facilities."

In order for charter schools to obtain facilities from a District, each charter school requesting facilities from a District in which it is operating must annually provide that District with a reasonable projection of the charter school's average daily classroom attendance by in-District students for the following year. That District must then allocate facilities to the charter school for that following year based upon this projection unless the request for facilities is based upon projections of fewer than 80 units of average daily classroom attendance for the year. Also, if during that following year the charter school generates less average daily classroom attendance

by in-District students than it projected, the charter school must reimburse that District for the over-allocated space at rates to be set by the State Board of Education.

Each District's responsibilities are effective three years from the effective date of the measure, November 8, 2000, or, if a District passes a Bond measure prior to that time, on the first day of July next following the passage of that Bond measure. In addition, the State Department of Education must propose, and the State Board of Education may adopt, regulations implementing the provisions outlined above, including defining certain terms, defining procedures and establishing appropriate timelines.

A further discussion regarding the requirements for Charter Schools and their interaction with school district finances is included in our workshop notebook under the heading "Charter Schools" and can be found in tab 12 of our Workshop Notebook.

A description of our firm, and our capabilities as bond counsel to various public agencies, including school districts, is set forth in tab 3 of our Workshop Notebook.

If you have any questions regarding the above, please feel free to contact either Alex Bowie, Robert Anslow, or Julia Rice at (949) 851-1300 or (800) 649-0997, fax (949) 851-2014, or via e-mail to abowie@bawg.com, ranslow@bawg.com, and/or jrice@bawg.com.

**Brief Comparison of
General Obligation Bonds/ School Facilities Improvement Districts / Mello-Roos Bonds**

	General Obligation Bonds	S F I D	Mello-Roos Bonds
Types of Facilities which may be financed	Real Property and Improvements thereto	Real Property and Improvements thereto	* Real and tangible property with a useful life of 5 years or more. * Can also be set up to finance services on an on-going basis.
Territory for Election	School District Boundaries	School District Boundaries, excluding designated areas (which can be existing CFDs).	Area of CFD, as determined by school district legislative body (must include whole APN's).
Vote Required	2/3 ^{rds} favorable	2/3 ^{rds} favorable	2/3 ^{rds} favorable
General Procedural Requirements	* Resolution calling election is adopted.	* Notice of public hearing required to set up SFID. * Map prepared and filed. * New tax rate area established (December 1 filing deadline for following tax year).	* Intention resolution and map prepared. * Rate and method of tax prepared. * Notice of public hearing. * CFD Facilities Report. * Resolution forming CFD. * Call and conducting of election.
Available Election Dates	Can combine with Statewide election dates or call a special election on any Tuesday, but the election cannot be held on the day before, the day of, or the day after any State designed holiday. (Special elections usually involve higher costs of election).	Can combine with Statewide election dates or call a special election on any Tuesday, but the election cannot be held on the day before, the day of, or the day after any State designed holiday. (Special elections usually involve higher costs of election).	Can combine with Statewide election dates or call a special election on any Tuesday, but the election cannot be held on the day before, the day of, or the day after any State designed holiday. (Special elections usually involve higher costs of election).
Tax Collection	Collected on all property within district subject to property taxes on a fixed rate.	Collected on all property within SFID boundaries subject to property taxes on a fixed rate.	Collected within boundaries of CFD based upon approved rate and method of special tax.

This table is intended to provide a brief comparison of the listed financing structures. It is not a complete listing or description.

The applicability of the legal matters discussed may differ substantially in individual situations. The foregoing information has been prepared by Bowie, Arneson, Wiles & Giannone as an overview of the subjects discussed and should not be construed as individual legal advice.