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JONES HALL

# PROPOSITION 39

## General Obligation Bonds

# Citizens' Oversight Committees

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# Legal Background

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- Before Nov. 7, 2000: School district GOBs could be issued only following a 2/3 favorable vote
- After Nov. 7, 2000: Prop. 39 on Statewide ballot changed law to permit School District GOBs if approved by a 55% vote

# ...55% Vote Requires Accountability

## ◆ 2/3 vote:

- No express accountability
- Low success rate because of high threshold

## ◆ 55% vote:

- More success for facility funding due to lower vote threshold
- Accountability:
  - Specific projects
  - Citizens' Oversight Committee
  - District legislative body must conduct an annual, **independent performance audit** to ensure that the funds are expended on listed projects
  - District Legislative body must conduct an annual, **independent financial audit** of the proceeds from the sale of the bonds until all of those proceeds are expended for the school facilities projects.

# Lawmakers' Stated Intent

All of the following should be realized in connection with Prop 39 bond measure:

- ◆ Vigorous efforts are undertaken to ensure that the expenditure of bond proceeds are legal
- ◆ Taxpayers directly participate in the oversight of bond expenditures
- ◆ Members of COCs promptly alert the public to any waste or improper expenditure of bond funds, and
- ◆ Unauthorized expenditures of bond proceeds should be investigated, prosecuted, and the courts act swiftly to restrain any improper expenditures

*[Educ.C. 15264]*

# High-Level Purpose of COC

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- Meet
- Review building fund expenditures
- Annual report to community

# Composition of Committee

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- ◆ The COC shall consist of at least seven members appointed by District Board:
  - 1 member active in a business organization
  - 1 member active in a senior citizens' organization
  - 1 member active in a bona fide taxpayers' organization
  - 1 member active in support and organization of the district, such as an advisory council or foundation
  - A student enrolled in the district who is active in a community college district
  - Two additional community members

# Conflicts Prohibited

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- ◆ No employees or officials of the district may serve on the committee
- ◆ No vendors, contractors or consultants for the district may serve on the committee
- ◆ Members are Volunteers: No compensation or financial interests

# Meetings

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- ◆ At least one meeting per year
- ◆ Requires a Quorum: Majority of total members
- ◆ Open to the public and follow an agenda
- ◆ Secretary takes minutes which are approved at the next meeting and posted on District website after approval
- ◆ Members are advised to refrain from discussing COC business among themselves outside of a COC meeting, including via e-mail or through phone calls.

# COC Review of Bond Expenditures

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- ◆ EDUCATION CODE SECTION 15728:
  - *The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditures of taxpayers' money for school construction....*
- ◆ Post-expenditure review of bond proceeds to ensure spending of bond proceeds relates to voter-approved projects
- ◆ COC informs the public by meeting, reviewing and reporting
- ◆ Not a decision-making commission or board

# COC Review of Bond Expenditures(continued)

- ◆ District staff attend meetings and report on spending
- ◆ District board provides COC with response to all findings, recommendations, and concerns addressed in the annual, independent financial and performance audits within three months of receiving the audits
- ◆ Expenditures must be for purposes permitted under Prop. 39 and of the type approved by District voters on the ballot
- ◆ Construction projects generate many types of costs that would not occur 'but for' the construction project--materials, equipment, architectural, engineering design work, construction work, building permits, bond issuance costs, permits, EIRs, project administration, etc. These are incidental but directly related to construction and proper bond expenditures.

# COC Review of Bond Expenditures (continued)

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## Legal standard applied regarding specificity:

*"The critical factor in assessing whether the project list complied with Proposition 39 is whether it allows for meaningful approval and oversight of the bond expenditures ... ." Thus, if the list defines or identifies the projects in a manner that clearly apprises the voters, the auditors, and the public oversight committees of the types of projects for which the money is intended to be used, that is sufficient."*

*2007 Foothill-De Anza CCD v. Emerich*

# COC Review of Bond Expenditures (continued)

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- ◆ Expenditure types expressly prohibited under Prop. 39:
  - No teacher or administrative salaries
  - No school operating expenses
  - No costs incurred by the district for providing technical or administrative assistance to the COC

# COC Review of Bond Expenditures (continued)

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## ◆ COC may (but does not have to):

- Receive and review District performance and financial audit
- Inspect facilities and grounds
- Review deferred maintenance plans
- Review efforts by District to implement cost saving measures

# SMCCCD BOC Report

- ◆ The District's BOC must issue one report per year summarizing the results of BOC review confirming that the District spent bond proceeds on the types of project approved by District voters
- ◆ Generally the annual report is prepared after review of the District's annual bond financial audit and performance, which is prepared by an outside auditing firm and provided by the District to the COC by March 31 of each year, with respect to the fiscal year which ended the previous June 30.
- ◆ Common practice: present report at open meeting to District Board and also post on District web site
- ◆ Additional reports may be prepared if BOC deems necessary to inform the public
- ◆ All meeting agendas, meeting minutes and reports should be posted on District web site and available to the community

# Questions

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