

## VISTA UNIFIED SCHOOL DISTRICT

### Community Relations

#### ADMINISTRATIVE REGULATION No. 1225

#### CITIZENS' BOND OVERSIGHT COMMITTEE

Proposition 39 was approved by California voters in the November 7, 2000 general election and provides that the governing board of a school district may pursue the authorization and issuance of general obligation bonds by 55 percent vote of the electorate. As a result of the passage of Proposition 39, language was added to the Education Code requiring school districts passing a bond designated as a Proposition 39 bond to establish a citizens' bond oversight committee ("Committee") to actively review and report to the public on uses of bond proceeds to ensure that they are spent only on permissible purposes. In order to comply with these requirements, and in furtherance of BP 7112 which adopts and incorporates the San Diego County Taxpayers Association ("SDCTA") "Best Practices" for Oversight Committees, the District's Board of Trustees ("Board") shall establish a Committee to oversee the expenditure of bond funds in connection with any authorization of general obligation bonds pursuant to Proposition 39.

#### A. Committee's Purpose

The purpose of the Committee is to inform the public concerning the expenditure and uses of bond revenues. The Committee's legal charge is to actively review and report on the expenditure of taxpayer's money for school construction. The Committee shall convene to provide oversight of the following:

1. That bond revenues from Proposition 39 bonds adopted by a 55 percent vote of the electorate are expended only for the purpose described in Article 13A, section 1, subdivision (b)(3) of the California Constitution including 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
2. That, for Proposition 39 bonds adopted by a 55 percent vote of the electorate, as prohibited by Article 13A, section 1, subdivision (b)(3)(A) of the California Constitution, no funds are used for any teacher and administrative salaries or other school operating expenses normally paid from the general fund; although salaries for personnel assigned to the bond program are allowable as described in applicable case law.

#### B. Committee's Duties

The Committee shall engage in the following activities in furtherance of its purpose:

1. Receiving and reviewing copies of the annual performance audits required by Article 13A, section 1, subdivision (b)(3)(C) of the California Constitution.
2. Receiving and reviewing the annual financial audits required by Article 13A, section 1, subdivision (b)(3)(C) of the California Constitution.

3. Subject to the limitations of Section C(4), inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of Article 13A, section 1, subdivision (b)(3) of the California Constitution.
4. Receiving and reviewing copies of any deferred maintenance proposals or plans developed by the District, including any reports required by Education Code section 17584.1.
5. Reviewing efforts by the District to maximize bond revenues by implementing cost-saving measures including, but not limited, to the following:
  - a. mechanisms designed to reduce the costs of professional fees;
  - b. mechanisms designed to reduce the cost of site preparation;
  - c. recommendations regarding the joint use of core facilities;
  - d. mechanisms designed to reduce costs by incorporating efficiencies in school site design; and
  - e. recommendations regarding the use of cost-effective and efficient reusable facility plans.

### **C. Committee Operations**

The Committee's legal charge is to review bond expenditures and to inform the public about the uses of bond proceeds. Except as otherwise provided in these regulations, the Committee's purpose is an audit function rather than an advisory function. The Committee shall not have the authority to:

1. Participate in the bond sale and issuance process or make decisions concerning the timing, terms or structure of a bond issuance, except that the Committee may review the District's bond issuance documents upon the conclusion of a bond sale if desired.
2. Determine how bond funds shall be spent.
3. Select contractors or consultants for bond projects or participate in the negotiation or bid process for such contractors and consultants.
4. Enter or inspect a job site or construction project without prior permission of the District Superintendent or designee. Frequency and timing of all such visits are within the sole discretion of the Superintendent or designee. Visits to job sites require that the Committee member(s) be accompanied by a representative of the District and require that all safety measures in effect at the job site be followed.
5. Contact District contractors or consultants, including without limitation, accountants, auditors, architects, financial advisors and legal counsel, without the prior permission of the District Superintendent or designee.
6. Require the District to prepare reports or conduct audits more frequently than those required by law.

The Committee shall not be entitled to legal representation by District legal counsel or at District expense, unless permitted by the Board.

Other than a reimbursement of bond expenditures paid from another source of District funds and incurred prior to the first bond sale, if any, for which the Board made a statement of intent to

reimburse in accordance with federal tax rules and regulations, it is impermissible for any bond moneys that are the responsibility of the Committee to be spent before the formation and first official meeting of the Committee, including, without limitation, any carryover funds from previous issues of bonds.

The Committee shall meet in accordance with a regular schedule, the dates of which shall be determined by the Committee. The Committee must meet with sufficient frequency to ensure that members remain fully informed about all relevant current conditions. The Committee shall schedule at least quarterly (or more frequently as needed) meetings as either a full body, or in the form of subcommittees that shall then report back to the full Committee at its next regularly scheduled meeting, for the initial two years after passage of the bond measure or until 20 percent of bond projects are completed, and at least quarterly thereafter. Subcommittees may be formed to monitor specific components of program implementation such as the audit process or construction progress and prepare the annual report to the Board and public. Both committees and subcommittees shall be subject to the Brown Act. As appropriate, updates shall be provided to the board on the Committee's activities. Committee members shall be available to attend Board meetings when performance and financial audits are presented. The Superintendent or his/her designee shall act as staff to the Committee and attend Committee meetings. Members of the Board may attend as necessary or desirable. The Chair shall call the roll of the Committee members at the beginning of each meeting. Each Committee member shall sign an attendance sheet that shall be maintained by the person designated by the Chair.

The Committee shall periodically meet with the Superintendent of the District and at least annually with the Board. Committee members are encouraged to attend Board meetings. The Committee shall meet with the Board prior to the Committee's presentation of its performance assessment report.

The Committee's meetings are subject to the Ralph M. Brown Act, Government Code section 54950 et seq. Meetings shall be open to the public and noticed in the same manner as proceedings of the Board. An action item on the agenda may be approved by a simple majority of Committee members in attendance, as long as a quorum is present.

The Committee shall annually select a Chair and a Vice-Chair and other officers as it determines, each for a one (1)-year term that may be renewed as determined by the Committee. District staff shall keep minutes of each Committee meeting. The minutes shall be distributed to each Committee member, and the Board, if requested, at the earliest reasonable date prior to the next subsequent meeting. Minutes of Committee proceedings and all documents received and reports issued shall be a matter of public record. The Committee shall submit all documents and minutes to the District's webmaster for publication on the District's internet website for public and community information services. The Committee's website shall be accessible from the main page of the District website. The Committee website shall disclose, at a minimum, the following:

- Minutes of all meetings, including subcommittees, within a reasonable amount of time.
- Materials provided to the Committee at each meeting.
- Sufficient notice of the dates and times and agendas of planned meetings of the Committee and its subcommittees, when applicable.
- List of the Committee's members and a main contact information (email and phone).
- List of District bond-funded projects accompanied by measurements of their status in terms of budgets and timelines.
- Any alterations to District's bond-funded project budgets or timelines with adequate explanations for these changes.
- Comparison of current status of District bond-funded projects in terms of budgets and timelines to the original budget and timeline estimates of the project.

Committee website(s) shall be kept current and up-to-date. Whenever available, the Committee shall support open data by publishing on its website the raw (non-summarized) data on spending, progress, timelines, and budgets, in an open or widely supported file format.

The Board shall, without expending bond funds:

1. Provide the Committee with any necessary technical assistance;
2. Provide administrative assistance in furtherance of the Committee's purpose; and
3. Provide the Committee with sufficient resources to publicize the Committee's conclusions.

The District may appoint District staff and consultants to serve as a resource to the Committee as needed to assist the Committee in carrying out its duties.

By Committee vote at any of its regular meetings, the Committee may form sub-committees for specific tasks. The Committee shall elect a chair of each sub-committee and provide written assignment goals for each subcommittee. Sub-committees may be subject to the Ralph M. Brown Act, pursuant to Government Code section 54952, subdivision (b).

#### **D. Committee Selection and Composition**

The Committee shall be comprised of individuals who either live or work within the boundaries of the school district. The Superintendent or designee shall solicit applications for membership on the Committee, and in the event the number of applicants exceeds the number of spaces available, shall conduct interviews of interested and qualified citizens and make recommendations to the Board for appointments. The Board shall have the authority at its sole discretion to select and appoint the Committee, including the filling of vacancies that may occur during a member's term. Committee members shall be appointed by the Board as part of a regularly scheduled and publicly noticed meeting. The process shall include statement of qualifications to the public as well as the opportunity for public comment on the nominees. While the Committee must consist of at least seven (7) members, the Board shall determine the final size of the Committee. The Board shall determine the duration and staggering of Committee members' terms.

As required by law, Committee membership shall include the following categories:

1. One (1) member shall be active in a business organization representing the business community located within the school district;
2. One (1) member shall be active in a senior citizens' organization;
3. One (1) member shall be active in a bona fide taxpayers' organization;
4. One (1) member shall be the parent or guardian of at least one child currently enrolled in a school of the District; and
5. One (1) member shall be both a parent or guardian of at least one child currently enrolled in a school of the District and be an active member in a District parent-teacher organization, such as the PTA or schoolsite council.

The District shall seek to ensure that a majority of the members of the Committee possesses expertise in one or more of the following areas:

- Large scale construction operations
- Municipal/public finance matters
- Performance and financial auditing
- Construction related project management
- Real estate acquisition or sales
- Environmental laws or regulations
- Information technology

At least one member of the Committee shall be a representative of SDCTA that lives or works within the District and is prepared to meet other membership requirements. SDCTA will identify and nominate a member to fulfill the duties of the member of a bona fide taxpayers association. In the case that a member of SDCTA cannot be identified to serve on the Committee, solicitation for such representation shall be opened to the broader District community.

At its first meeting, the Committee shall appoint a chairperson and vice-chairperson to serve in the absence of the chairperson.

For at least 45 days, the District shall notify the public, and the entities listed below, of vacancies on the Committee, by one or more reasonably available means, in order to recruit qualified Committee members:

- San Diego County Taxpayers Association
- American Institute of Architects
- American Society of Civil Engineers
- Associated Builders and Contractors of San Diego
- Associated General Contractors of San Diego
- Community organizations (e.g. Rotary, Kiwanis, etc.)
- Construction Managers Association of America
- Financial Executives International
- Labor organizations
- Local and community papers
- Local Chambers of Commerce
- Parent teacher organizations

Such notice shall include a description of the Committee duties and scope of authority. Eligibility requirements of, and selection criteria for, the Committee shall be made publically available. Appointments shall be made at a regularly scheduled publicly noticed meeting of the Board.

No employee or official of the District shall be appointed to the Committee. Additionally, no vendor, contractor, or consultant of the District shall be appointed to the Committee. Members of the Committee shall, pursuant to Education Code section 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code.

Committee members who wish to be appointed for a second or third two-year term shall reapply to the Board for consideration. Committee members shall receive no remuneration for their participation on the Committee.

**E. Vacancies; Replacing a Committee Member**

Members should attend regularly scheduled meetings. Members are expected to share responsibilities for carrying out the work of the Committee and abide by Board policies and administrative regulations. The Committee will advise a Committee member in writing that he/she is in violation of Committee participation requirements if the Committee member fails to attend two consecutive regularly scheduled meetings without acceptable reason announced in advance. A new Committee member will be named by the Board if one or more of the following events occurs:

1. The Committee member submits a written resignation; or
2. The Committee member misses two (2) consecutive Committee meetings without acceptable reason announced in advance.

An individual who replaces such a member shall serve until the completion of the original member's term. Thereafter, the member must apply for an additional term if she/he wishes to remain on the Committee. A member who is replaced may appeal to the Board for the Board to reappoint that person to the Committee.

A Committee member who no longer serves as a representative of the designated group she/he was appointed to represent (e.g., ceases to be active within a taxpayers' organization, or ceases to have a child enrolled in the District) shall be allowed to complete his/her term. However, that Committee member shall not be entitled to serve a subsequent term as a representative of the designated group.

Within sixty (60) days of being notified of a Committee vacancy, the Board will appoint a new member to complete the term of the vacancy following the process used to select the original Committee members.

Committee members shall be subject to prohibitions regarding incompatibility of office pursuant to Government Code sections 1125-1129 and financial interest in contracts pursuant to Government Code sections 1090-1099.

**F. Bylaws**

The Committee shall be granted the opportunity of review and the opportunity to propose changes to its bylaws. Such bylaws shall set forth, at a minimum, the manner or governing board policy in which the Committee carries out its responsibilities and the term limits of the Committee's members. Bylaws must be adopted before the Committee is formed.

**G. Orientation**

Prior to the Committee performing any of its duties, and for each new Committee member, a comprehensive orientation shall be required. District staff shall provide such an overview and any technical assistance to Committee members, including copies of relevant law (e.g., Proposition 39), District bylaws and these regulations, bond resolutions, project descriptions, budgets and schedules, financial reports and minutes of recent meetings. Each new Committee appointees shall be given the opportunity to tour District facilities included in or affected by the bond funded program. In order to satisfy the orientation requirements, SDCTA is permitted to assist or provide an in-person presentation.

**H. Access to Information; Financial and Performance Audits; Annual and Final Reports**

1. Access to District Information. Access to “dashboard” or other critical District benchmarking data or reports shall be made available to Committee members in a timely manner. To the extent bond revenues are combined or used in conjunction with other sources of funding, District staff shall provide the Committee with such technical assistance in understanding the status of all funds. Such reports, to the extent reasonably practicable, shall summarize the original funds budgeted and allocated, amounts expended and obligated to date and the percent of completion as of the close of the most recent accounting quarter. In addition, District staff shall provide Committee members, at least as frequently as it provides such information to the Board, with a chart or its equivalent containing milestones for each project in the program such that Committee members may track progress of the bond-funded projects.
2. Project Delivery Methods. The District shall present to the Committee the available project delivery options for the District and which one(s) will be utilized for projects undertaken during the bond program. The District shall outline the reason each particular method will be utilized. The District shall present to the Committee prior to final approval by the Board, to the extent reasonably practicable.
3. Financial Audit. The Committee may provide its advice regarding independent auditors of the bond-funded program, recognizing that the Board has the sole authority to make such appointments. Financial audits shall comply with Government Auditing Standards and all Proposition 39 requirements. The Committee shall review and comment upon the annual financial report prior to its presentation to the Board. Independent auditors shall meet annually with the Committee audit subcommittee and/or the full Committee (and prior to presentation to the Board), at a regularly scheduled meeting. The Committee may make recommendations and provide input on the audit.
4. Performance Audit. In addition to the financial audit prepared by the financial auditors, the Committee shall participate in a comprehensive performance audit conducted by qualified independent professionals who have demonstrated knowledge in the fields of project management and construction industry best practices. The purpose of this audit is to provide accountability to the public that those projects that were supported through their approval of the bond are being completed, and that any changes to the projects have been adequately explained. All performance audits shall comply with Proposition 39 legal requirements and shall provide an independent review and evaluation of at least the following:
  - Current Bond Program Management Program/Plan.
  - Design and Construction Timelines.
  - Review of Project Budgets.
  - Use of Best Practices and Technology Regarding the Planning and Construction of School Facilities.
  - Payment Procedures and Payment Processing Time.
  - Program and Construction Management Structure.
  - Change Order Procedures and Results.
  - Construction Project Delivery Methods and Performance Analysis.
  - “Best Practices” for Procurement of Contractors and Professional Services and compliance with public contracting code.
  - Evaluation of Public Outreach and Communication Program.

- Evaluation of overall transparency of Bond Program, including but not limited to the evaluation of the bond website information.
- Compliance with legal requirements for prevailing wage and labor compliance.
- Review performance of Committee.

The Committee shall review and comment upon the annual performance audit prior to its presentation to the Board. The Committee shall have the opportunity to make recommendations and provide input on the audit.

5. Significant Program Changes. The Board shall, to the extent practicable, provide the Committee with the opportunity to review and comment upon major changes in each Bond-funded program, allocation and project prior to final action being taken by the Board. A major change is one that affects the lesser of 10% of a specific project budget allocation or \$1 million or a delay of a major project by 6 months or more. In the event of significant program changes, the Committee shall produce a special report in addition to its annual report specifically covering the program changes to scope, budget and timelines. This report shall be readily available to the public and submitted to appropriate media outlets.
6. Annual Report. The Committee shall be the principal author, with District staff assistance as may be requested, of its required annual report to the public. The District shall provide technical, production and distribution support. The report shall appear on the Committee web site and be available at principal office of the District. The project priority shall be those specific projects that were approved by the public upon approval of the bond measure. The report shall contain, at a minimum:
  - List of all original projects, and their status regarding budget, scope and /or implementation.
  - Certification of all expenditures.
  - Any changes, such as specific project cancellations or scope reductions, shall be highlighted and thoroughly explained.
  - A list of joint-use projects.
  - Status and scoring of deferred maintenance projects.
  - Prevailing wage requirements compliance report.
7. Bond Issuance. The District shall inform the Committee concerning the full details of the selection of bond counsel, underwriters, the issuance of bonds, the refinancing of bonds, project list with relevant bond ballot language and bond financing structure. The Committee shall be fully informed before each new series of Bonds is issued.
8. Joint Use. The Committee shall review the extent to which the District has used best efforts to maximize opportunities for bond-funded projects to be used in conjunction with other local agencies in a manner that benefits the public and reduces costs. The Committee shall describe such joint-use efforts in the annual report.
9. Deferred Maintenance. As part of the Committee's responsibility to review the status of the District's deferred maintenance elimination plan and major repair and replacement plan, the District shall provide such information to the Committee as information only.
10. Certification of Expenditures. The Committee shall review whether expenses are within the constraints of the bond, and any non-certified expenditures shall be publicly reported. The District shall present to the Committee written certification that all bond revenues

currently expended have been in conformity with the bond resolution and applicable statutes on an annual basis. Certification of expenditures must be in the annual report.

11. Prevailing wage requirements. As most public works projects fall under prevailing wage requirements, the Committee shall request and receive an annual compliance report from the District detailing related compliance issues of importance.
12. Liability. Upon request, the Board shall provide written “hold harmless” (indemnity) agreements to Committee members.
13. Final report. Upon final completion of the entire Bond-funded Project, the Committee shall prepare and distribute a complete detailed analysis of all expenditures, noting significant variances from the original stated expenditure plan, why such variance occurred, and any mitigation measures taken by the District.

Legal Reference:

EDUCATION CODE

15278-15282 Citizens’ Oversight Committee

15284-15288 Bond Accountability

GOVERNMENT CODE

54950 et seq. Meetings

1125-1129 Incompatible Activities

1090 et seq. Prohibitions Applicable to Specified Officers

CALIFORNIA CONSTITUTION

Art. XIII A, section 1(b)

Art. XVI, section 18(b)

Other Reference:

Oversight Committee Best Practices, approved by the San Diego County Taxpayers Association on October 21, 2011 (as amended November 20, 2015).

Regulation Reviewed:

Adopted: December 13, 2018