



DANNIS WOLIVER KELLEY

## **Legal Issues Regarding Proposition 39 Audits**

Panel before the Audit Working Group  
of the  
State Allocation Board Audit Subcommittee

**October 9, 2012**

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1. In November 2000, voters approved Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act ("Prop. 39").
  - A. Proposition 39 amends Article XIII, Section 1 and Article XVI, Section 18, of the California Constitution, allowing approval of school district and community college district bonds by 55% of the voters in an election, rather than by two thirds of the voters, subject to compliance with certain accountability requirements to protect public funds.
    - (i) Limitations on the use of bond funds to the purposes stated in California Constitution Article XIII, Section 1(b)(3), preventing use for teacher or administrator salaries or other operational purposes. (Cal. Constitution, Art. XIII, Sec. 1(b)(3)(A).)
    - (ii) Bond measure must list specific projects to be funded. (Cal. Constitution, Art. XIII, Sec. 1(b)(3)(B).)
    - (iii) Governing board must certify it has evaluated safety, class size reduction and information technology. (Cal. Constitution, Art. XIII, Sec. 1(b)(3)(B).)
    - (iv) District must conduct an annual independent performance audit to verify that funds were used for the projects listed. (Cal. Constitution, Art. XIII, Sec. 1(b)(3)(C).)
    - (v) District must conduct an annual independent financial audit until all funds have been expended for listed projects. (Cal. Constitution, Art. XIII, Sec. 1(b)(3)(D).)
  - B. Proposition 39 was implemented through Assembly Bill No. 1908 which added Education Code section 15264 et seq. (Stats. 2000, ch. 44, § 3.)
    - (i) Pursuant to Education Code section 15266, the bond election must be held on the date of a primary or general election, a regularly scheduled local election, or a statewide special election.
    - (ii) Pursuant to Education Code section 15268,
      - (1) The amount of tax levied on each parcel is restricted to \$30 per \$100,000 of assessed value of taxable property in non-unified school districts, and



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- (2) The amount of bonds may not exceed 1.25% of assessed value of taxable property.
  - (iii) Pursuant to Education Code section 15270,
    - (1) The amount of tax levied on each parcel is restricted to \$60 per \$100,000 of assessed value of taxable property in unified school districts.
    - (2) Amount of bonds may not exceed 2.5% of assessed value of taxable property.
  - (iv) Pursuant to Education Code section 15272, the ballot measure shall state that the governing board will appoint a citizens' oversight committee and conduct annual independent audits to assure the funds are spend only on school and classroom improvements.
- C. Assembly Bill No. 1908 also added section 15278 et seq. to the Education Code, specifying the purpose, functions, meeting and membership requirements of Citizens' Oversight Committees (COC).
- (i) Pursuant to Education Code section 15278(b), the purpose of a COC shall be:
    - (1) To inform the public concerning the expenditure of bond revenues.
    - (2) To actively review and report on the proper expenditure of tax-payer money for school construction.
    - (3) To advise the public whether a district is in compliance with Prop. 39.
    - (4) To provide oversight to insure that bond revenues are expended only for the purposes allowed by Prop. 39.
    - (5) To provide oversight to insure that no bond revenues are used for teacher or administrator salaries or other operating expenses.
  - (ii) Activities of a COC may include:
    - (1) Receiving and reviewing annual independent performance and financial audits required by California Constitution, Article XIII A, Section 1(b)(3)(C) and Section 1(b)(3)(D) (Educ. Code, § 15278(c)(1) and (2).)



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- (2) Inspecting school facilities and grounds to ensure bond revenues are expended in compliance with Prop. 39. (Educ. Code, § 15278 (c)(3).)
- (3) Receiving and reviewing deferred maintenance proposals, plans and reports. (Educ. Code, § 15278 (c)(4).)
- (4) Reviewing district efforts to maximize bond revenues through implementation of cost measures, including:
  - a. Mechanisms to reduce professional fees;
  - b. Mechanisms to reduce cost of site preparation;
  - c. Recommendations regarding joint use of core facilities;
  - d. Mechanisms to reduce costs by design efficiencies;
  - e. Recommendations regarding cost-effective and efficient reusable facilities plans. (Educ. Code, § 15278 (c)(5).)

D. Assembly Bill No. 1908 also added section 15284 et seq. to the Education Code, creating a new cause of action to restrain and prevent expenditure of funds.

- (i) Any citizen residing in the district who pays ad valorem real property taxes may bring an action if it appears that any of the following are present:
  - (1) Funds are used for purposes other than those specified in Prop. 39. (Educ. Code, § 15284 (a)(1).)
  - (2) Expenditures do not comply with Prop. 39 requirements. (Educ. Code, § 15284 (a)(2).)
  - (3) An expenditure in violation of Prop. 39 will be made or will continue to be made during the litigation that would produce waste or great or irreparable harm. (Educ. Code, § 15284 (a)(3).)
  - (4) The governing board has willfully failed to appoint a citizens' oversight committee. (Educ. Code, § 15284 (a)(4).)
- (ii) An action pursuant to this section shall be known as a "School Bond Waste Prevention Action" and shall have precedence. (Educ. Code, § 15284 (b) and (e).)
- (iii) Rights, remedies and penalties of this section are cumulative to those established under other laws. (Educ. Code, § 15284 (c).)



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- (iv) A court may award attorneys fees to a prevailing party if an order to restrain and prevent an expenditure is issued. (Educ. Code, § 15284 (d).)
  - (v) Education Code section 15288 provides that law enforcement officials shall investigate and prosecute any violation of law associated with an expenditure of funds upon receipt of allegations of waste or misuse of bond funds. (Educ. Code, § 15288.)
- 2. In 2001, Senate Bill No. 1129 added Education Code section 15271 that authorized a school facilities improvement district created by a school district or community college district to issue Prop. 39 bonds. (Stats. 2001, ch.132, § 3.)
- 3. In 2006, Assembly Bill No. 3063 amended Education Code section 15266. (Stats. 2006, ch 289 § 3.)
  - (vi) It modified the meaning of "regularly scheduled election date" for Proposition 39 bond elections by defining a local election as one in which all voters in the school district may vote, and
  - (vii) It added bond elections to permissible mail ballot elections.
- 4. In 2010, Senate Bill No. 1473 enacted Education Code section 15286 that required that annual independent financial and performance audits should be conducted in accordance with Government Auditing Standards issued by the Federal Comptroller General. (Stats. 2010, ch. 294, § 1.)
- 5. In 2011, Senate Bill No. 423 amended Education Code section 15286 by requiring that audits for the prior fiscal year (July-June) be submitted by March 31 to the citizens' oversight committee. (Stats. 2011, ch. 237, § 1.)

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## Proposition 39: Text of Proposed Law

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends provisions of the California Constitution and the Education Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW SMALLER CLASSES, SAFER SCHOOLS AND FINANCIAL ACCOUNTABILITY ACT

#### SECTION ONE. TITLE

This act shall be known as the Smaller Classes, Safer Schools and Financial Accountability Act.

#### SECTION TWO. FINDINGS AND DECLARATIONS

The people of the State of California find and declare as follows:

(a) Investing in education is crucial if we are to prepare our children for the 21st Century.

(b) We need to make sure our children have access to the learning tools of the 21st Century like computers and the Internet, but most California classrooms do not have access to these technologies.

(c) We need to build new classrooms to facilitate class size reduction, so our children can learn basic skills like reading and mathematics in an environment that ensures that California's commitment to class size reduction does not become an empty promise.

(d) We need to repair and rebuild our dilapidated schools to ensure that our children learn in a safe and secure environment.

(e) Students in public charter schools should be entitled to reasonable access to a safe and secure learning environment.

(f) We need to give local citizens and local parents the ability to build those classrooms by a 55 percent vote in local elections so each community can decide what is best for its children.

(g) We need to ensure accountability so that funds are spent prudently and only as directed by citizens of the community.

#### SECTION THREE. PURPOSE AND INTENT

In order to prepare our children for the 21st Century, to implement class size reduction, to ensure that our children learn in a secure and safe environment, and to ensure that school districts are accountable for prudent and responsible spending for school facilities, the people of the State of California do hereby enact the Smaller Classes, Safer Schools and Financial Accountability Act. This measure is intended to accomplish its purposes by amending the California Constitution and the California Education Code:

(a) To provide an exception to the limitation on ad valorem property taxes and the two-thirds vote requirement to allow school districts, community college districts, and county offices

of education to equip our schools for the 21st Century, to provide our children with smaller classes, and to ensure our children's safety by repairing, building, furnishing and equipping school facilities;

(b) To require school district boards, community college boards, and county offices of education to evaluate safety, class size reduction, and information technology needs in developing a list of specific projects to present to the voters;

(c) To ensure that before they vote, voters will be given a list of specific projects their bond money will be used for;

(d) To require an annual, independent financial audit of the proceeds from the sale of the school facilities bonds until all of the proceeds have been expended for the specified school facilities projects; and

(e) To ensure that the proceeds from the sale of school facilities bonds are used for specified school facilities projects only, and not for teacher and administrator salaries and other school operating expenses, by requiring an annual, independent performance audit to ensure that the funds have been expended on specific projects only.

#### SECTION FOUR

Section 1 of Article XIII A of the California Constitution is amended to read:

SEC. 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on ~~(1)~~ any indebtedness of the following:

(1) *Indebtedness* approved by the voters prior to July 1, 1978. ~~or (2) any bonded~~

(2) *Bonded indebtedness* for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) *Bonded indebtedness* incurred by a school district, community college district, or county office of education 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, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college

Text of Proposed Laws — Continued

board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until ~~(a)~~ of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b).

SECTION FIVE

Section 18 of Article XVI of the California Constitution is amended to read:

SEC. 18. (a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the ~~qualified electors thereof~~, voters of the public entity voting at an election to be held for that purpose, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the ~~qualified electors~~ voters of the public entity voting on the proposition at such election; nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and ~~also provision to constitute~~ provide for a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the ~~same~~, provided, however, anything to the contrary herein notwithstanding, when indebtedness.

(b) Notwithstanding subdivision (a), on or after the effective date of the measure adding this subdivision, in the case of any school district, community college district, or county office of education, any proposition for the incurrence of indebtedness in the form of general obligation bonds 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, shall be adopted upon the approval of 55 percent of the voters of the district or county, as appropriate, voting on the proposition at an election. This subdivision shall apply only to a proposition for the incurrence of indebtedness in the form of general obligation bonds for the purposes specified in this subdivision if the proposition meets all of the accountability requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

(c) When two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority or 55 percent of the ~~qualified electors~~ voters, as the case may be, voting on any one of such those propositions, vote in favor thereof, ~~such~~ the proposition shall be deemed adopted.

SECTION SIX

Section 47614 of the Education Code is amended to read: 47614. A school district in which a charter school operates shall permit a charter school to use, at no charge, facilities not currently being used by the school district for instructional or administrative purposes, or that have not been historically used for rental purposes provided the charter school shall be responsible for reasonable maintenance of those facilities.

(a) The intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools.

(b) Each school district shall make available, to each charter school operating in the school district, facilities sufficient 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 the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.

(1) The school district may charge the charter school a pro rata share (based on the ratio of space allocated by the school district to the charter school divided by the total space of the district) of those school district facilities costs which the school district pays for with unrestricted general fund revenues. The charter school shall not be otherwise charged for use of the facilities. No school district shall be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students.

(2) Each year each charter school desiring facilities from a school district in which it is operating shall provide the school district with a reasonable projection of the charter school's average daily classroom attendance by in-district students for the following year. The district shall allocate facilities to the charter school for that following year based upon this projection. If the charter school, during that following year, generates less average daily classroom attendance by in-district students than it projected, the charter school shall reimburse the district for the over-allocated space at rates to be set by the State Board of Education.

(3) Each school district's responsibilities under this section shall take effect three years from the effective date of the measure which added this subparagraph, or if the school district passes a school bond measure prior to that time on the first day of July next following such passage.

(4) Facilities requests based upon projections of fewer than 80 units of average daily classroom attendance for the year may be denied by the school district.

(5) The term "operating," as used in this section, shall 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.

(6) The State Department of Education shall propose, and the State Board of Education may adopt, regulations implementing this subdivision, 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 and establishing timelines for the request for, reimbursement for, and provision of, facilities.

SECTION SEVEN. CONFORMITY

The Legislature shall conform all applicable laws to this act. Until the Legislature has done so, any statutes that would be affected by this act shall be deemed to have been conformed with the 55 percent vote requirements of this act.

SECTION EIGHT. SEVERABILITY

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

SECTION NINE. AMENDMENT

Section 6 of this measure may be amended to further its purpose by a bill passed by a majority of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media.

SECTION TEN. LIBERAL CONSTRUCTION

The provisions of this act shall be liberally construed to effectuate its purposes.

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CALIFORNIA CODES  
EDUCATION CODE  
SECTION 15264-15276

**15264.** It is the intent of the Legislature that all of the following are realized:

(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.

(b) Taxpayers directly participate in the oversight of bond expenditures.

(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.

(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.

**15266.** (a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district, community college district, or a school facilities improvement district may decide, pursuant to a two-thirds vote and subject to Section 15100 to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district, community college district, or a school facilities improvement district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election at which all of the electors of the school district, community college district, or school facilities improvement district, as appropriate, are entitled to vote, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

**15268.** The total amount of bonds issued, including bonds issued pursuant to Chapter 1 (commencing with Section 15100), shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate

levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, would not exceed thirty dollars (\$30) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

**15270.** (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars (\$60) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars (\$25) per year per one hundred thousand dollars (\$100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300).

**15271.** The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300).

**15272.** In addition to the ballot requirements of Section 15122 and the ballot provisions of this **code** applicable to governing board member elections, for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes.

**15274.** If it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, the governing board shall cause an entry of that fact to be made upon its minutes. The governing board shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

**15276.** Notwithstanding any other provision of law, a county board

of **education** may not order an election to determine whether bonds may be issued under this article to raise funds for a county office of **education**.

**CALIFORNIA CODES**  
**EDUCATION CODE**  
**SECTION 15278-15282**

**15278.** (a) If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution is approved, the governing board of the school district or community college shall establish and appoint members to an independent citizens' oversight committee, pursuant to Section **15282**, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.

(b) 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 expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution. The citizens' oversight committee shall convene to provide oversight for, but not be limited to, both of the following:

(1) Ensuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Ensuring that, as prohibited by subparagraph (A) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, no funds are used for any teacher or administrative salaries or other school operating expenses.

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

**15280.** (a) The governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee.

(b) All committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet website maintained by the governing board.

**15282.** (a) The citizens' oversight committee shall consist of at least seven members to serve for a term of two years without compensation and for no more than two consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the district.

(2) One member shall be active in a senior citizens' organization.

(3) One member shall be active in a bona fide taxpayers' organization.

(4) For a school district, one member shall be the parent or guardian of a child enrolled in the district. For a community college district, one member shall be a student who is both currently enrolled in the district and active in a community college group, such as student government. The community college student member may, at the discretion of the board, serve up to six months after his or her graduation.

(5) For a school district, one member shall be both a parent or guardian of a child enrolled in the district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

(b) No employée or official of the district shall be appointed to the citizens' oversight committee. No vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 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.

CALIFORNIA CODES  
EDUCATION CODE  
SECTION 15284-15288

**15284.** (a) An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution may be maintained against any officer, agent, or other person acting on behalf of, that school district or community college district, by a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property within the school or community college district, or who has paid an ad valorem tax on real property within the school or community college district within one year before the commencement of the action if it appears by the complaint or affidavits that any of the following conditions are present:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.

(4) The governing board of a school district or community college has willfully failed to appoint the citizens' oversight committee in violation of the requirements of Section 15278.

(b) An action brought pursuant to this section shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.

(c) The rights, remedies, or penalties established by this section are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 of Chapter 3 of Title 7 of Part 2 of the **Code** of Civil Procedure.

(d) If an order is obtained to restrain and prevent an expenditure of funds pursuant to subdivision (a), a court may award attorneys' fees pursuant to Chapter 6 (commencing with Section 1021.5) of Title 14 of Part 2 of the **Code** of Civil Procedure.

(e) The action authorized by this section shall be known as a "School Bond Waste Prevention Action."

**15286.** Consistent with the provisions contained in subparagraphs (C) and (D) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the required annual, independent financial and performance audits for the preceding fiscal year shall be submitted to the citizens' oversight committee established pursuant to Section 15278 by March 31 of each year. These audits shall be conducted in accordance with the Government Auditing

Standards issued by the Comptroller General of the United States for financial and performance audits.

**15288.** It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds.

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**MARILYN J. CLEVELAND** is a Shareholder in the San Francisco and Long Beach offices and is a member of the Business, Property and Construction Practice Group. She has represented school and community college districts in the areas of real property, business, finance and construction, including asset management, property acquisition, disposition by sales, leases, joint ventures and exchanges, environmental compliance, public bidding and contracting, energy efficiency and other school construction issues since 1990. She also deals with financing, including parcel tax measures, and land use issues. Ms. Cleveland's civil litigation experience has emphasized real property, eminent domain, inverse condemnation, conflicts of interest, Brown Act, the California Environmental Quality Act (CEQA), other environmental issues and construction. Ms. Cleveland also advises clients and provides training with regard to Proposition 39 bonds, including citizen oversight committees, Brown Act, conflicts of interest, California Public Records Act, parliamentary procedures and other Board issues. She served as chair of the firm's Business, Property and Construction Practice Group from 2000-2004. Ms. Cleveland has been a member of the Coalition for Adequate School Housing (CASH), and its Legal Advisory Committee for over 20 years. She has been a member of the California Association of School Business Officials (CASBO) for about 15 years, serving in 2010-2011 on the State Board of Directors, in 2009-2010 on the CASBO Foundation Board, currently as a member and as the 2010-2011 Chair of the statewide Associate Member Committee and previously as an associate member liaison for the Northern Section Board of Directors. Ms. Cleveland is a frequent speaker at conferences and workshops held by professional associations including C.A.S.H., CASBO, the California School Boards Association (CSBA), the Community College Facilities Coalition (CCFC), the Community College League of California (CCLC), and firm consortia, webinars and workshops. As part of identifying key developments in education business law, Ms. Cleveland was instrumental in obtaining an Attorney General Opinion clarifying that Proposition 39 bond funds can be used for staff salaries for bond-related work. Ms. Cleveland was lead counsel on the team that prepared an amicus brief for C.A.S.H. when the California Supreme Court considered the case of *City of Marina v. Board of Trustees of the California State University* (June 17, 2003) 109 Cal.App.4<sup>th</sup> 1179. She identified the impact of labor compliance early, helped compile a DIR-approved labor compliance program for public entities, and continues to update and advise clients with regard to the evolution of labor compliance. She provided extensive speaking and training regarding each of these topics. She is a member of the Property Law Section of the State Bar of California. She was listed in the 2005 Northern California Super Lawyers under Government Law and is a member of the California Council of School Attorneys. Ms. Cleveland graduated from University of California, Hastings College of Law (J.D.), Golden Gate University (M.B.A.), San Francisco State University (M.A.), and from Stanford University (B.A.).

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### **About Our Firm**

Danniss Woliver Kelley is a diverse firm that has distinguished itself over a 30-year history as the best education law firm in California. One of the nation's largest women-owned law firms, DWK is proud to be considered the "thought leaders" in education law: the firm that best knows the legal issues our clients face, and even more importantly, how to resolve them.

Our range of experience at Danniss Woliver Kelley and the communication between our practice groups provide an unmatched resource. Since we have clients throughout the state, we are aware of trends that impact your interests. We recognize issues that others may fail to spot, and work in close collaboration with clients to devise practical strategies for resolution.

We were one of the first law firms in California to dedicate its practice to serving public schools. We advise school districts, community college districts and county offices of education with passionate conviction and insight. We find our work enormously rewarding. Since 1978, we have stood shoulder-to-shoulder with our clients, working together for the betterment of California education.

We offer high-quality, effective, and prompt legal services in any area the district may require. Our practice groups are comprised of experienced attorneys who possess thorough knowledge of the issues and challenges facing public schools. Our practice groups cover the areas of:

- Labor Relations
- Personnel Management & Human Resources
- Business, Property & Construction
- Special Education & Student Services
- Counsel to Governing Boards
- Charter Schools
- Litigation

Because we have clients throughout the state, we are aware of trends that enable us to represent you better. Our team approach to client service means that while specific attorneys represent your district, several others will remain informed of the district's issues so that they may assist if needed. We pride ourselves on the breadth and depth of experience within the firm and on the promptness with which we respond to clients' inquiries. We regard ourselves as members of your team at all levels of our service.