

## BP 7214 Facilities

### General Obligation Bonds

**Note:** Article 16, Section 18 of the California Constitution permits school districts to issue bonds for the construction of school facilities with either a 66.67 percent or 55 percent approval by local voters. To qualify for the lower 55 percent (Proposition 39) threshold, districts must use the bond funds for certain purposes and fulfill additional accountability requirements, as specified in this Board policy and accompanying administrative regulation.

**Note:** Education Code 15100 sets forth conditions under which the Governing Board may call for a bond election. Pursuant to Education Code 15266, these conditions must be satisfied if the Board is seeking either the 66.67 percent or 55 percent approval threshold. The following paragraph is consistent with Education Code 15100.

**Note:** In 88 Ops.Cal.Atty.Gen. 46 (2005), the Attorney General opined that a school district may use district funds to hire a consultant to assess the feasibility of developing a bond measure and to assess the public's support and opposition. However, according to the Attorney General, a district may not use district funds to hire a consultant to develop and implement a strategy to build a coalition to support the bond because such activities would be an impermissible use of public funds for campaign purposes in violation of Education Code 7054. For further discussion regarding use of district funds for political purposes, see BP 1160 - Political Processes.

The Governing Board recognizes that school facilities are an essential component of the educational program and that the Board has a responsibility to ensure that the district's facilities needs are met in the most cost-effective manner possible. When the Board determines that it is in the best interest of district students, it may order an election on the question of whether bonds shall be issued to pay for school facilities.

(cf. 1160 - Political Processes)

(cf. 7110 - Facilities Master Plan)

(cf. 7210 - Facilities Financing)

**Note:** For bonds requiring a 55 percent majority, Education Code 15268 and 15270 set limits as to the maximum amount of the bond and the tax rate that may be levied as a result of the bond. Limitations for bonds requiring a 66.67 percent majority are detailed in Education Code 15102-15109.

The Board shall determine the appropriate amount of the bonds in accordance with law.

When any project to be funded by bonds will require state matching funds for any phase of the project, the ballot for the bond measure shall include a statement as specified in Education

Code 15122.5, advising voters that, because the project is subject to approval of state matching funds, passage of the bond measure is not a guarantee that the project will be completed. (Education Code 15122.5)

### Bonds Requiring 55 Percent Approval by Local Voters

Note: Pursuant to Education Code 15266, upon adoption of the resolution specified below, the district must comply with the accountability provisions required for the 55 percent threshold, even if the bond ultimately passes by a 66.67 percent majority of the voters.

The Board may decide to pursue the authorization and issuance of bonds by approval of 55 percent majority of the voters pursuant to Article 13A, Section 1(b)(3) and Article 16, Section 18(b) of the California Constitution. If two-thirds of the Board agrees to such an election, the Board shall vote to adopt a resolution to incur bonded indebtedness if approved by a 55 percent majority of the voters. (Education Code 15266)

(cf. 9323.2 - Actions by the Board)

Note: Education Code 15266 requires that the bond election be held only during a regularly scheduled local election at which all of the electors (voters) in the district are entitled to vote. Therefore, those school districts whose boundaries encompass more than one city or county or whose board members are elected by trustee area must ensure that the bond election is on a ballot in which all of the electors in the district are entitled to vote, such as a statewide primary, general, or special election.

The bond election may only be ordered at a primary or general election, a statewide special election, or a regularly scheduled local election at which all of the electors of the district are entitled to vote. (Education Code 15266)

Bonded indebtedness incurred by the district shall be used only for the following purposes: (California Constitution Article 13A, Section 1(b)(3) and 1(b)(3)(A))

1. The construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities
2. The acquisition or lease of real property for school facilities
3. The refunding of any outstanding debt issuance used for the purposes specified in items #1-2 above

The proposition approved by the voters shall include the following accountability requirements: (California Constitution Article 13A, Section 1(b)(3))

1. A requirement that proceeds from the sale of the bonds be used only for the purposes specified in items #1-2 above, and not for any other purposes including teacher and administrative salaries and other school operating expenses
2. A list of specific school facilities projects to be funded and certification that the

Board has evaluated safety, class size reduction, and information technology needs in developing that list

(cf. 0440 - District Technology Plan)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 6151 - Class Size)

Note: The question of whether or not bond proceeds may be used to pay the costs of the audits required pursuant to items #3-4 below should be referred to the district's legal counsel. However, an Attorney General opinion (87 Ops.Cal.Atty.Gen. 157 (2004)) supports the use of bond proceeds to pay the salaries of district employees to the extent they perform administrative oversight work on bond projects. According to the opinion, because these audits are expressly required by Proposition 39 and are directly related to the bond projects rather than routine school operations, these project administration costs may be considered as within the purposes specified in California Constitution Article 13A, Section 1(b)(3)(A) and therefore are an appropriate expenditure of bond proceeds.

Note: The performance audit described in item #3 may include an evaluation of the planning, financing, and implementation of the overall facilities program.

3. A requirement that the Board conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed

4. A requirement that the Board conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects

Note: If the district has a general obligation bond approved under the 55 percent threshold, Education Code 15278 requires that the Board appoint a citizens' oversight committee. See the accompanying administrative regulation for requirements related to the composition and duties of the committee.

If a district general obligation bond requiring a 55 percent majority is approved by the voters, the Board shall appoint an independent citizens' oversight committee to inform the public concerning the expenditure of bond revenues as specified in Education Code 15278 and the accompanying administrative regulation. This committee shall be appointed within 60 days of the date that the Board enters the election results in its minutes pursuant to Education Code 15274. (Education Code 15278)

(cf. 1220 - Citizen Advisory Committees)

(cf. 9324 - Minutes and Recordings)

Note: Pursuant to Education Code 15286, as amended by SB 581 (Ch. 91, Statutes of 2013), the district is required to ensure that performance and financial audits specified in items #3-4 above are issued in accordance with law and

provided to the citizens' oversight committee as specified in the following paragraph.

The Superintendent or designee shall ensure that the annual, independent performance and financial audits required pursuant to items #3-4 above are issued in accordance with the U.S. Comptroller General's Government Auditing Standards and submitted to the citizens' oversight committee at the same time they are submitted to him/her and no later than March 31 of each year. (Education Code 15286)

The Board shall provide the citizens' oversight committee with responses to all findings, recommendations, and concerns addressed in the performance and financial audits within three months of receiving the audits. (Education Code 15280)

Note: The following optional paragraph may be revised to reflect district practice.

The Board may disband the citizens' oversight committee when the committee has completed its review of the final performance and financial audits.

#### **Bonds Requiring 66.67 Percent Approval by Local Voters**

The Board may decide to pursue the authorization and issuance of bonds by approval of 66.67 percent majority of the voters pursuant to Education Code 15100 and Article 13A, Section 1(b)(2) of the California Constitution. If a majority of the Board agrees to such an election, or upon a petition of the majority of the qualified electors residing in the district, the Board shall adopt a resolution ordering an election on the question of whether to incur bonded indebtedness if approved by a 66.67 percent majority of the voters. (Education Code 15100)

Note: Pursuant to Education Code 15101, an election for a bond measure that requires 66.67 percent approval may be held only on specified days. Districts using this option should coordinate efforts with their local elections officials to ensure compliance with law.

The bond election may be ordered to occur on any Tuesday, except a Tuesday that is a state holiday or the day before or after a state holiday, is within 45 days before or after a statewide election unless conducted at the same time as the statewide election, or is an established election date pursuant to Elections Code 1000 or 1500. (Education Code 15101)

Bonds shall be sold to raise money for any of the following purposes: (Education Code 15100)

1. Purchasing school lots
2. Building or purchasing school buildings
3. Making alterations or additions to school building(s) other than as may be necessary for current maintenance, operation, or repairs
4. Repairing, restoring, or rebuilding any school building damaged, injured, or destroyed by fire or other public calamity
5. Supplying school buildings and grounds with furniture, equipment, or necessary apparatus

of a permanent nature

6. Permanently improving school grounds

7. Refunding any outstanding valid indebtedness of the district, evidenced by bonds or state school building aid loans

8. Carrying out sewer or drain projects or purposes authorized in Education Code 17577

9. Purchasing school buses with a useful life of at least 20 years

10. Demolishing or razing any school building with the intent to replace it with another school building, whether in the same location or in any other location

Except for refunding any outstanding indebtedness, any of the purposes listed above may be united and voted upon as a single proposition by order of the Board and entered into the minutes. (Education Code 15100)

Note: The following paragraph is optional. Districts that have had approval of a bond with 66.67 percent majority vote are not required by law to appoint a citizens' oversight committee but may, at their discretion, form an oversight committee under requirements and guidelines adopted by the Board.

The Board may appoint a citizens' oversight committee to review and report to the Board and the public as to whether the expenditure of bond revenues complies with the intended purposes of the bond.

#### Certificate of Results

Note: The following section applies to bond elections requiring either a 55 percent or 66.67 percent approval by local voters. Pursuant to Elections Code 15372, following a bond election, the county elections official must submit a certificate of the election results to the Board, which then must provide certification to the County Board of Supervisors, as specified below.

If the certificate of election results received by the Board shows that the appropriate majority of the voters is in favor of issuing the bonds, the Board shall record that fact in its minutes. The Board shall then certify to the County Board of Supervisors all proceedings it had in connection with the election results. (Education Code 15124, 15274)

#### Resolutions Regarding Sale of Bonds

Note: The following section applies to bond elections requiring either a 55 percent or 66.67 percent approval by local voters. Pursuant to Education Code 15140, bonds may be offered for sale by either the County Board of Supervisors or the County Superintendent of Schools. However, the County Board of Supervisors may adopt a resolution authorizing a district to sell bonds on its own behalf when the district has not received a qualified or negative certification in its most recent interim financial report; see BP/AR 3460 - Financial Reports and Accountability.

Note: In addition to districts' authority to issue bonds pursuant to Education Code 15100-15254, Government Code 53506-53509.5 provide an alternative method. However, effective January 1, 2014, any district that intends to issue bonds using this alternative method is subject to stricter requirements, pursuant to Government Code 53508.5, as added by AB 182 (Ch. 477, Statutes of 2013). Districts using the alternative method may need to further modify this policy and accompanying administrative regulation and should consult with legal counsel as necessary.

Note: Regardless of the method used to issue bonds, pursuant to Education Code 15144.1 and 15144.2, as added by AB 182, the district's total debt service to principal ratio must not exceed four to one and, if the bond allows for the compounding of interest, such as a capital appreciation bond (CAB), and matures more than 10 years after its issuance date, the bond must be redeemable by the district no later than 10 years from issuance. Pursuant to Government Code 53508.6, as added by AB 182, a current interest bond (CIB) may now have a maturity of up to 40 years provided that the district complies with the disclosure requirements specified in Education Code 15146, as amended by AB 182, and makes a finding that the useful life of the facility to be financed with the bonds is at least equal to the maturity date of the bonds.

Following passage of the bond measure by the appropriate majority of voters, the Board shall pass a resolution directing the issuance and sale of bonds. In accordance with law, the resolution shall prescribe the total amount of bonds to be sold and may also prescribe the maximum acceptable interest rate, not to exceed eight percent, and the time(s) when the whole or any part of the principal of the bonds shall be payable. (Education Code 15140; Government Code 53508.6)

Note: To ensure prudence in the expenditure of district resources, the Board should carefully consider all available funding instruments, such as CIBs, CABs, and convertible capital appreciation bonds, how the bonds will be sold, and other related issues as specified in Education Code 15146. Districts considering the method of bond sale and kinds of bonds to sell are encouraged to review CSBA's Governance Brief Bond Sales - Questions and Considerations for Districts.

In passing the resolution, the Board shall consider each available funding instrument, including, but not limited to, the costs associated with each and their relative suitability for the project to be financed.

Prior to the sale of bonds, the Board shall disclose, as an agenda item at a public meeting, either in the bond issuance resolution or a separate resolution, available funding instruments, the costs and suitability of each, and all of the following information: (Education Code 15146; Government Code 53508.9)

1. Express approval of the method of sale (i.e., competitive, negotiated, or hybrid)
2. Statement of the reasons for the method of sale selected
3. Disclosure of the identity of the bond counsel, and the identities of the bond underwriter and the financial adviser if either or both are utilized for the sale, unless these individuals have not

been selected at the time the resolution is adopted, in which case the Board shall disclose their identities at the public meeting occurring after they have been selected

4. Estimates of the costs associated with the bond issuance, including, but not limited to, bond counsel and financial advisor fees, printing costs, rating agency fees, underwriting fees, and other miscellaneous costs and expenses of issuing the bonds

Note: Pursuant to Education Code 15146, as amended by AB 182 (Ch. 477, Statutes of 2013), the district must comply with the requirements specified in the following two paragraphs if it intends to sell bonds that allow for compounding of interest, including, but not limited to, CABs.

When the sale involves bonds that allow for the compounding of interest, such as a capital appreciation bond (CAB), items #1-4 above and the financing term and time of maturity, repayment ratio, and the estimated change in the assessed value of taxable property within the district over the term of the bonds shall be included in the resolution to be adopted by the Board. The resolution shall be publicly noticed on at least two consecutive meeting agendas, first as an information item and second as an action item. The agendas shall identify that bonds that allow for the compounding of interest are proposed. (Education Code 15146)

Prior to adopting a resolution for the sale of bonds that allow for the compounding of interest, the Board shall be presented with the following: (Education Code 15146)

1. An analysis containing the total overall cost of the bonds that allow for the compounding of interest
2. A comparison to the overall cost of current interest bonds
3. The reason bonds that allow for the compounding of interest are being recommended
4. A copy of the disclosure made by the underwriter in compliance with Rule G-17 adopted by the federal Municipal Securities Rulemaking Board

After the sale, the Board shall be presented with the actual issuance cost information and shall disclose that information at the Board's next scheduled meeting. The Board shall ensure that an itemized summary of the costs of the bond sale and all necessary information and reports regarding the sale are submitted to the California Debt and Investment Advisory Commission. (Education Code 15146; Government Code 53509.5)

#### Bond Anticipation Notes

Note: Pursuant to Education Code 15150, the district is authorized to issue a bond anticipation note when the Board determines by resolution that it is in the best interest of the district to finance a facilities project on an interim basis in anticipation of the sale of bonds that has been approved by voters. The note may only be issued in accordance with law and subject to terms and conditions prescribed by the Board.

Whenever the Board determines that it is in the best interest of the district, it may, by

resolution, issue a bond anticipation note, on a negotiated or competitive-bid basis, to raise funds that shall be used only for a purpose authorized by a bond that has been approved by the voters of the district in accordance with law. (Education Code 15150)

Note: Education Code 15150 clarifies that interest on a bond anticipation note may be paid at maturity from the proceeds of the sale of the bond in anticipation of which it was issued or paid periodically from a property tax levied for that purpose if certain conditions are satisfied.

Payment of principal and interest on any bond anticipation note shall be made at note maturity, not to exceed five years, from the proceeds derived from the sale of the bond in anticipation of which that note was originally issued or from any other source lawfully available for that purpose, including state grants. Interest payments may also be made from such sources. However, interest payments may be made periodically and prior to note maturity from an increased property tax if the following conditions are met: (Education Code 15150)

1. A resolution of the Board authorizes the property tax for that purpose.
2. The principal amount of the bond anticipation note does not exceed the remaining principal amount of the authorized but unissued bonds.

A bond anticipation note may be issued only if the tax rate levied to pay interest on the note would not cause the district to exceed the tax rate limitation set forth in Education Code 15268 or 15270, as applicable.

#### Legal Reference:

#### EDUCATION CODE

7054 Use of district property, campaign purposes

15100-15254 Bonds for school districts and community college districts

15264-15288 Strict Accountability in Local School Construction Bonds Act of 2000

17577 Sewers and drains

47614 Charter school facilities

#### ELECTIONS CODE

324 General election

328 Local election

341 Primary election

348 Regular election

356 Special election



357 Statewide election

1302 School district election

15372 Elections official certificate

## GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

8855 California Debt and Investment Advisory Commission

53506-53509.5 General obligation bonds

53580-53595.5 Bonds

54952 Definition of legislative body, Brown Act

## CALIFORNIA CONSTITUTION

Article 13A, Section 1 Tax limitation

Article 16, Section 18 Debt limit

## COURT DECISIONS

San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District (2006) 139 Cal.App.4th 1356

## ATTORNEY GENERAL OPINIONS

88 Ops.Cal.Atty.Gen. 46 (2005)

87 Ops.Cal.Atty.Gen. 157 (2004)

Management Resources:

## CSBA PUBLICATIONS

Bond Sales - Questions and Considerations for Districts, Governance Brief, December 2012

Legal Guidelines: Use of Public Resources for Ballot Measures and Candidates, Fact Sheet, February 2011

## WEB SITES

CSBA: <http://www.csba.org>

California Debt and Investment Advisory Commission: <http://www.treasurer.ca.gov/cdiac>

California Department of Education: <http://www.cde.ca.gov>

California Office of Public School Construction: <http://www.opsc.dgs.ca.gov>

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