



# COUNTDOWN TO THE BOND

## Are You Planning a 2016 Bond Election?

### Preparing Your Ballot Measure

# PART 2

“Countdown to the Bond” is a multi-part series of legal advisories designed to help your district navigate its way to a November 2016 bond election. Experts believe that November 8, 2016, will be a critical election date for school and community college district bond measures, as the presidential election is likely to bring the most supportive voters out to the polls. If you missed Part 1 of Countdown to the Bond, click [here](#) to read it.

Many districts are finalizing their plans to call general obligation bond measures on November 8, 2016. Now is the time to complete voter polling, finalize team member selection, and begin developing a ballot measure and bond project list.

General obligation bonds (GO bonds) are voter-approved long-term debt instruments secured by *ad valorem* property taxes that are collected in amounts sufficient to pay annual debt service on the bonds. Today, most districts call GO bond elections under the authority of “Proposition 39,” which permits a district to issue bonds that are approved by at least 55% of the votes cast in the election. The legal authority for the authorization and issuance of such GO Bonds can be found in the California Constitution, article XIII A, section 1(b)(3) and Education Code section 15000 et seq.

The documentation required to call a GO bond election is relatively straightforward. However, a district must make a number of important planning, policy, sizing and structuring decisions early in the bond authorization process, and these decisions are then reflected in the specific contents of the ballot measure.

#### WHAT MAY BE FINANCED?

Planning for a potential bond measure typically involves the preparation of a Facilities Master Plan to guide the assessment of need and facilities priorities. Proposition 39 bond proceeds may be spent on “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.” Consequently, GO bonds authorized under Proposition 39 may be spent on furniture and equipment while traditional GO bond funds may not. The Constitution prohibits the use of GO bonds to finance ordinary operation or maintenance expenses.

Although ordinary operating expenses may not be financed with bond proceeds, salary costs, professional fees (such as for architects, engineers and construction managers) and other costs directly connected to bond projects are appropriately paid from bond proceeds. The California Attorney General has opined that project administrative costs, such as monitoring contracts and project funding, overseeing construction progress, and performing overall project management and accounting that facilitates timely completion of a construction project, are appropriately financed with bond proceeds – even where such services are provided by a district employee. (See 87 Ops.

Cal.Atty.Gen. 157 (2004); *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 109 Cal.App.4th 1356.) Recently, the California Attorney General opined that consultant costs incurred prior to the date of the bond election are not a cost of issuance of bonds and may not be paid with bond proceeds. (99 Ops.Cal.Atty.Gen. 18 (2016).)

While ordinary maintenance expenses may not be paid from bond proceeds, with increased frequency, districts are looking to bond proceeds to finance the installation of energy efficiency, technology-related and deferred maintenance projects and equipment so long as deferred maintenance refers to projects which involve replacement of major building systems or components such that the project can be classified as reconstruction, rehabilitation or replacement of school facilities under Proposition 39. Technology projects require special attention to ensure that tax rules regarding the useful life of equipment financed with long-term bonds are observed.

#### WHAT ACCOUNTABILITY MEASURES MUST DISTRICTS OBSERVE?

In preparing a bond measure, the district must incorporate reference to Proposition 39 accountability requirements, which include:

- A requirement that the proceeds be used only for their stated purposes;
- A list of the specific school facilities projects to be funded, and certification that the governing board has evaluated safety, class size reduction, and information technology needs in developing the project list;
- A requirement that the governing board conduct an annual independent performance audit to ensure that the funds have been expended only for the listed projects; and
- A requirement that the governing board conduct an annual independent financial audit until all proceeds have been spent.

In addition, Proposition 39 requires that the governing board establish a citizens’ oversight committee after a successful bond election. The committee is charged with reviewing whether bond proceeds are spent only for the specific projects listed in the bond measure and verifying no funds are used for teacher or administrator salaries or other school operating expenses. The committee is also charged with advising the

public if these requirements are not met. The committee must consist of at least seven members and include members who meet specific criteria, though the board may appoint additional members as it sees fit. The size of the committee has no upper limit. Most districts like to reference the important role of a citizens' oversight committee in the bond measure.

### HOW IS A BOND MEASURE CALLED?

In order to place a Proposition 39 bond measure on the ballot, the district and its bond finance team craft a board resolution to call the bond election. The board resolution incorporates the complete ballot measure language, a bond project list, some required findings, a ballot measure summary, and a Tax Rate Statement. Upon adoption by the governing board, the resulting order of election is delivered to the County Registrar of Voters, with a copy to the County Board of Supervisors, for placement on the ballot.

- **BOND PROJECT LIST.** Proposition 39 requires that ballot measures list the specific school facilities projects to be funded. Thus, the district should take care to draft a project list that addresses the prospective needs of the district since the district may not be able to change projects from those listed, even if priorities or circumstances change. Accordingly, when drafting a ballot measure and resolution

calling an election, districts must carefully balance the need for specificity with the desire for flexibility.

- **TAX RATE STATEMENT.** An estimate of tax amounts per each \$100 of assessed valuation of property must accompany every bond measure to provide notice to voters of how much the measure will cost. The law recently was amended to require a Tax Rate Statement to include an estimate of total debt service to be paid if all bonds are issued. The Tax Rate Statement is prepared by the district's financial consultant.
- **BALLOT MEASURE SUMMARY.** A district must craft a summary of the ballot measure, not to exceed 75 words. Although a complete statement of the measure and the bond project list will be printed in the ballot pamphlet for all registered voters, many voters only see the ballot measure summary. It is important for the summary to have impact, be accurate, focus on capital projects and include the total principal amount of bonds to be issued and the applicable interest rates. Voter planning consultants and bond counsel should be involved in this process.
- **BOARD APPROVAL OF RESOLUTION.** Proposition 39 requires board approval by a two-thirds vote to place a GO bond measure on a ballot. Once the election is called, the measure campaign begins.

### Coming in August, 2016:

*"Countdown to the Bond  
(Part 3)—Lawful Campaigning  
for Ballot Measures."*



DWK is a full-service education and Bond Counsel law firm with experts in all areas of education facilities finance, planning and construction. If you need advice regarding a bond election or debt financing, feel free to contact any of our experts.

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