

COUNTDOWN TO THE BOND

Are You Considering a 2024 Bond Election?
Now is the Time to Begin 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 2024 bond election. November 5, 2024 will be a critical election date for school and community college district bond measures, as the presidential election is likely to bring supportive voters out to the polls. If you missed Part 1 of Countdown to the Bond, [click here](#) to read it.

Many districts are considering calling general obligation bond measures on November 5, 2024. Now is the time to conduct or complete initial 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 if 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 commonly involves the preparation of a Facilities Master Plan or other facilities assessment to guide the identification of needs 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." Note that GO bonds authorized under Proposition 39 may be spent on furniture and equipment while Proposition 46 (the old bond law) GO bond funds may not. The Constitution prohibits the use of GO bonds to finance ordinary operating 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 similar costs necessary and directly connected to bond projects are appropriately paid from bond proceeds. The California Attorney General has opined that project administrative costs, such as project monitoring, overseeing construction contractors, and performing project management that facilitates a construction project, are appropriately financed with bond proceeds – even when 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.) The California Attorney General has also opined that consultant costs for election preparation incurred prior to the date of the bond election are not a cost of issuance of bonds and should not be paid with bond proceeds (99 Ops.Cal.Atty.Gen. 18 (2016).) Districts may want to ensure that consultant pre-

election planning costs are identified separately from bond issuance costs so that they may be paid from an alternate source of funds.

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, it is an eligible bond proceeds expenditure. 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:

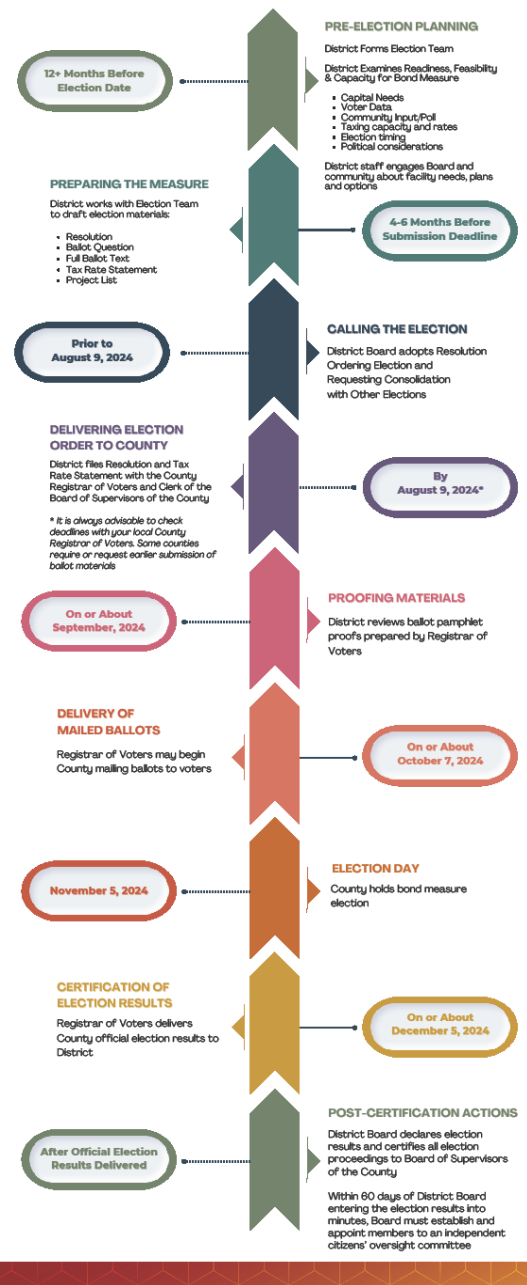
- A requirement that the proceeds be used only for their stated purposes;
- A list of the specific school facilities projects to be funded, and certification that the governing board has evaluated safety, class size reduction, and information technology needs in developing the project list;
- A requirement 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, the Education Code 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 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. Most districts like to reference the role of a citizens' oversight committee in the bond measure as an important accountability feature of their construction program.

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 full text of the ballot measure, including a bond project list; makes required findings; contains a ballot measure summary or question; and includes 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 will 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 need for flexibility.
- **TAX RATE STATEMENT.** An estimate of property tax amounts must accompany every bond measure to provide notice to voters of how much the measure will cost, including (among other things), the average annual tax rate and final fiscal year of the tax, an estimate of the highest tax rate and the year of the highest tax rate, and an estimate of the total debt service if all bonds are issued. Effective January 1, 2024, the tax rate must be expressed as a rate per each \$100,000 of assessed value of property rather than per each \$100 of assessed value of property as previously required. This change affects only expression of the tax in the tax rate statement, not the ballot measure summary.
- **BALLOT MEASURE SUMMARY.** A district must craft a summary of the ballot measure, not to exceed 75 words. The ballot measure summary is also referred to as the "ballot question" or the "ballot label." The full text of the measure and the bond project list are printed in the ballot pamphlet for all registered voters to review, but the ballot measure summary is printed on the voter punch card so all voters see it. It is important for the summary to be accurate, describe the types of projects that would be funded, include the total principal amount of bonds to be issued, the applicable interest rates, the rate of tax, the duration of the tax, and the amount of tax collected annually. That is a lot to include in a 75-word question! Voter planning consultants, bond counsel, and municipal advisor 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.



Download DWK's Bond Election Timeline

Coming in Spring 2024: "Countdown to the Bond Part 3 – Lawful Campaigning for Ballot Measures"

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