

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1253 (Cooley) – As Introduced February 17, 2017

[Note: This bill is doubled referred to the Assembly Higher Education Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Education finance: school bonds: citizens' oversight committees

SUMMARY: Revises the responsibilities of a local citizens' oversight committee (COC). Specifically, **this bill:**

- 1) Specifies that a COC shall be to conduct an active and in-depth investigation, in addition to informing the public concerning the expenditure of local general obligation (GO) bond revenues.
- 2) Requires, instead of authorizes, a COC to do the following:
 - a) Receiving and reviewing copies of the annual, independent performance audit required by paragraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
 - b) 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.
 - c) 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.
 - d) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district.
 - e) 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:
 - i) Mechanisms designed to reduce the costs of professional fees.
 - ii) Mechanisms designed to reduce the costs of site preparation.
 - iii) Recommendations regarding the joint use of core facilities.
 - iv) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.
 - v) Recommendations regarding the use of cost-effective and efficient reusable facility plans.
- 3) Adds the following to the duties of the COC:

- a) With respect to school districts, reviewing the school district's employment of professional firms for the conduct of bond issues and expenditures of proceeds of bond issues, including each of the following:
 - i) The identity of each firm that submitted one or more proposals for serving as financial advisor, underwriter, bond counsel, underwriter counsel, or trustee or proposals for serving as construction contractor for the facilities to be funded from the proceeds of the bond issue.
 - ii) The fees or costs proposed in each of the proposals.
 - iii) The fees or costs proposed by the firms selected by the school district.
 - iv) The school district's explanation or explanations for the selection of the firms.
 - v) Reviewing the county records of firms contributing in cash or in kind to the costs of the bond election to determine whether any of the contributors were selected by the school district to serve in any of the capacities described in (i).
 - vi) If any of the contributors to the bond election were selected by the school district to serve in any of the capacities referenced in (i), reviewing emails, letters, and other correspondence between the superintendent, business manager, or other key officials of the school district and each of the firms proposing to serve in any of the capacities referenced in (i) to determine whether there was an understanding by school district officials regarding the contributions, and reporting to the public regarding these occurrences.
- 4) Authorizes a citizen to obtain an order restraining and preventing any expenditure of bond proceeds due to the failure of the governing board of a school district or community college district to cooperate with a COC.
- 5) Requires the governing board of a school district or community college district to promptly provide to the COC any documentation requested by the COC.
- 6) Makes technical, clarifying changes.

EXISTING LAW:

- 1) Authorizes, under Section 1 of Article XIII A of the California Constitution, school districts, community college districts, or county offices of education (COEs) to pass a GO bond by 55% vote, provided that the local initiative includes the following accountability measures:
 - a) A requirement that the proceeds from the sale of the bonds be used only 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, and not for any other purpose;
 - b) Provide a list of the specific school facilities projects to be funded and certification that the school district board, community college board, or COE 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 COE conduct an annual, independent performance audit to ensure that the funds have been expended only on the specified projects; and,
 - d) A requirement that the school district board, community college board, or COE 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.
- 2) Requires the governing board of a school district or community college district to establish and appoint members to an independent COC within 60 days of the date that the governing board enters the election results on its minutes. (Education Code (EC) Section 15278(a))
- 3) Specifies that the purpose of the COC shall be to inform the public concerning the expenditure of bond revenues, including advising the public as to whether a school district or community college district is in compliance with the authorized uses of bond funds pursuant to Proposition 39 (2000). (EC Section 15278(b))
- 4) Requires the COC to consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms. While consisting of a minimum of at least seven members, the COC shall be comprised as follows:
- a) One member shall be active in a business organization representing the business community located within the school district or community college district.
 - b) One member shall be active in a senior citizens' organization.
 - c) One member shall be active in a bona fide taxpayers' organization.
 - d) For a school district, one member shall be the parent or guardian of a child enrolled in the school district. For a community college district, one member shall be a student who is both currently enrolled in the community college district and active in a community college group, such as student government. The community college student member may, at the discretion of the governing board of the community college district, serve up to six months after his or her graduation.
 - e) For a school district, one member shall be both a parent or guardian of a child enrolled in the school 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. (EC Section 15282)
- 5) Specifies that an employee or official of the school district or community college district, a vendor, contractor, or consultant shall not be appointed to the COC. (EC Section 15282)

FISCAL EFFECT: The Legislative Counsel has keyed this bill as a state-mandated local program.

COMMENTS: *Proposition 39.* In 2000, voters passed Proposition 39, a Constitutional Amendment which, among others, gave school and community college districts the opportunity to seek approval of a local school facilities bond based on 55% vote rather than 2/3 vote, provided that the local bond initiative meets specified accountability measures, including

identifying the projects to be funded by the bond measure and conducting annual independent financial and performance audits. AB 1908 (Lempert), Chapter 44, Statutes of 2000, a companion bill to Proposition 39, requires each district, within 60 days of the passage of a local bond with 55% vote to appoint a COC to monitor and review expenditures to ensure compliance with Proposition 39 requirements, and to keep the public informed about bond expenditures. The oversight committee must be comprised of a minimum of seven members. For school districts, they must include representatives of the business community, a bona fide taxpayers' organization, and a senior citizens' organization; a parent of a student attending the school district; and a parent active in a school's parent-teacher organization.

Under current law, a COC is authorized to conduct specified activities. *This bill* requires, rather than authorizes, a COC, to do the following:

- a) Review the annual, independent performance audit required by Proposition 39.
- b) Review the annual, independent financial audit required by Proposition 39.
- c) Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of Proposition 39.
- d) Review copies of any deferred maintenance proposals or plans developed by a school district or community college district.
- e) Review 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:
 - i) Mechanisms designed to reduce the costs of professional fees.
 - ii) Mechanisms designed to reduce the costs of site preparation.
 - iii) Recommendations regarding the joint use of core facilities.
 - iv) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.
 - v) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

The author states, "County grand juries, citizen oversight advocates, and investment analysts have indicated a strong preference for greater transparency on where bond monies are spent. Bond funds are not free money. Taxpayers and investors are entitled to know what these obligations pay for. Citizen oversight committees are an integral part of oversight and these committees need adequate tools and direction to enable fulfillment of this vital oversight role. Currently, the investigative responsibilities of these oversight committees, as outlined in statute, are vague and largely permissive. This has resulted in a patchwork of unequal oversight of bond fund implementation throughout the state."

The Committee may wish to consider the following:

Do COCs have the time and capacity to carry out the requirements of this bill? The COC is a volunteer committee comprised of individuals from the community, representing businesses, parents, seniors, and a taxpayer organization. These individuals are not required to have

expertise in the construction of school facilities, bond financing, or bond issuances. The frequencies of meetings vary, from meeting as few as once a year to meeting monthly. COCs of larger school districts that have passed larger sized bonds or multiple bonds may meet more frequently than COCs of smaller school districts.

Individuals appointed to COCs were originally authorized to serve a maximum of two consecutive two-year terms. Over time, districts started seeking waivers by the State Board of Education (SBE) to extend the term of individuals appointed to a COC. Districts cite the difficulties of finding qualified individuals and wanting continuity as reasons for seeking waivers. In 2012, AB 1199 (Brownley), Chapter 73, Statutes of 2012, extended the COC term by two years, from four to six years. This Session, SB 341 (Wilk), which recently passed the Senate, proposes to extend the term of COCs to no more than six two-year terms, for a total of 12 years. Current law prohibits COC members from receiving compensation and requires members to serve at least one two-year term. Imposing additional requirements of the COC may require more frequent meetings, which may deter individuals from volunteering to participate in COCs.

AB 1908 required a COC to ensure that bond revenues are expended only for expenditures authorized by Proposition 39 and to ensure that no funds are used for salaries or other school operating expenses. The legislation suggested additional activities a COC may undertake to carry out its functions. In order to strengthen the core purposes of a COC while not imposing too many new requirements, the author may wish to consider changing some, but not all, of the authorized activities to requirements (e.g., such as reviewing the annual financial and performance audits).

Do COCs have the expertise to be an investigative body? This bill adds as a purpose of a COC appointed by a school district to “conduct active and in-depth investigations” and requires the COC to investigate each professional firm that submits one or more proposal as financial advisor, underwriter, bond counsel, underwriter counsel, trustee, and construction contractor¹. The COC must evaluate the fees or costs in each proposal and the school district’s explanation for the firms selected by the school district. The COC must also review county records to determine whether the school district selected any firm that made cash or in kind contribution to the school district’s bond campaign. If a firm that contributed to a bond campaign was hired by the school district, the COC must investigate through a review of emails, letters, and other correspondence between the superintendent of the school district, the school district business manager, or other key officials and the firm to determine whether there was an understanding by the school district officials regarding the contributions, and report to the public.

This provision proposes to address suspected “pay to play” agreements, whereby a professional firm provides monetary or in-kind contributions to support a bond campaign with a guarantee by the school district to hire the firm after the bond passes. In some instances, there has been suspicion of fee inflation to offset the contribution to the bond campaign. In January 2016, at the request of then State Treasurer John Chiang, the Attorney General issued an opinion that concluded that such agreements violate constitutional and statutory prohibitions against using public funds to advocate for passage of a bond. These arrangements may have ceased since the issuance of the opinion by then Attorney General Kamala Harris.

¹ It is not clear whether the author intends for this requirement to apply to COCs appointed by a community college district.

As such, the Committee may wish to consider whether all firms submitting a proposal need to be investigated versus initiating an investigation if there is reason to believe that a violation of the constitution or state law may have occurred. The Committee may also wish to consider whether the COC is the appropriate body to conduct the investigation. A COE may be better equipped to handle such investigations.

Bond accountability. Under current law, a citizen residing in the school or community college district who is assessed an ad valorem tax may initiate an action to obtain an order restraining or preventing expenditure of bond funds if the expenditure or purpose for the funds are not used in accordance with authorized uses of funds prescribed by Proposition 39 or if a school district has not appointed an oversight committee. This bill authorizes a citizen to initiate action if a school district willfully fails to cooperate with the COC. Presumably, it would include a school district not providing information requested by the COC.

Committee amendments:

- 1) Strike the purpose of COCs to “conduct an active and in-depth investigation”.
- 2) Specify that a COC may request a COE to conduct an investigation on any connection between a contribution to a bond campaign and the selection of a firm and allow, rather than require, the COE to check email, letters, etc.
- 3) Require the COE to share a copy of the investigation with the COC.

Arguments in support. State Treasurer John Chiang, the sponsor of the bill, states, “Voters have approved over \$138 billion in local school facilities bonds since the approval threshold for these measures was lowered from a two-thirds supermajority to 55 percent in 2000. The Little Hoover Commission estimates that 200 new local bond oversight committees with 1,400 volunteers will be formed across the state in the next year to oversee the use of local education bonds. These individuals play a critical role in ensuring that bond proceeds are spent responsibly and for the intended purposes outlined in local bond measures.”

Arguments in opposition. The California Association of School Business Officials states, “The oversight committee members are appointed members of the community, not elected by the community. Should there be a discrepancy in expenditures, governing school boards are responsible for taking corrective measures and responding to their constituents on any number of issues that should arise during the development of capital outlay projects funded by bond proceeds. We are very concerned that adding new responsibilities to this structure would hinder school districts’ ability to recruit members of the community to participate in this process, would create conflicts and confusion for the public, and undermine school governing boards’ accountability role with their constituents.”

The California School Boards Association has an oppose unless amended position and requests amendments to remove the purpose of COCs to conduct an active and in-depth investigation and identify another agency capable of taking on the responsibilities.

Related legislation. SB 341 (Wilk), pending in the Assembly, expands the number of terms a member of the COC may serve, from one two-year term for no more than three consecutive terms (6 years) to six consecutive terms (12 years).

Prior related legislation. SB 581 (Wyland), Chapter 91, Statutes of 2013, requires the governing board of a district to provide the COC a response to any and all findings, recommendations and concerns raised in the Proposition 39 of 2000 annual, independent financial and performance audits of local education bond funds within three months of receiving the audits. Requires the final financial and performance audits to be submitted to the COC at the same time they are submitted to school or community college districts.

AB 1199 (Brownley), Chapter 73, Statutes of 2012, extends the term of local COC members from two consecutive two-year terms to three consecutive two-year terms.

SB 423 (Wyland), Chapter 237, Statutes of 2011, requires the financial and performance audits to be submitted to the COC by March 31 of each year.

REGISTERED SUPPORT / OPPOSITION:**Support**

State Treasurer John Chiang (sponsor)

Opposition

California Association of School Business Officials
California School Boards Association (unless amended)
Coalition for Adequate School Housing

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