



San Diego Unified School District

EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, Rm. 2148, San Diego, CA 92103-2682

Fax: (619) 725-5630
(619) 725-5639

Legal Services
Mark Bresee
General Counsel

DATE: May 6, 2009

TO: Stuart Markey, Executive Director,
Capital Improvement Bond Program

FROM: Mark Bresee, General Counsel *MB*

SUBJECT: Indemnity Provision in ICOC Bylaws
ICOC Governance Subcommittee Meeting, 5/7/09
Agenda Item 5.1

Per your request and the request of the Proposition S Independent Citizens Oversight Committee (ICOC), I looked into the issue of the possible inclusion of an indemnity provision in the ICOC Bylaws. As I stated verbally at the ICOC meeting, and as is explained below, an indemnity provision could easily be included.

I first checked our Memorandum of Coverage (MOC) with the District's excess insurance carrier to determine whether an indemnity provision would fall within the scope of our existing coverage. It would. Specifically, the MOC provides that coverage includes "those individuals who were or are now . . . appointed officials of the Member, whether or not compensated (including volunteers), including . . . Members of . . . any other committees, boards, commissions or special districts of the Member, while acting for or on behalf of the Member." So, while acting within the scope of their authority as a member of the ICOC, coverage already exists.

I also looked at a few examples of indemnity language in actual ICOC bylaws in existence. What I found among those that include an indemnity provision is simple, straightforward language. I recommend the same for our ICOC. (Two examples are attached – see Sections 3.6 and II(B)).

Finally, and obviously, an indemnity provision (and the bylaws) would need to be approved by the Board of Education.

Please feel free to contact me if you have additional questions.

MRB:dmh

Attachments

CITIZEN'S OVERSIGHT COMMITTEE BYLAWS

Section 1. Committee Established. The El Tejon Unified School District (the "District") was successful at the election conducted on November 2, 2005 (the "Election"), in obtaining authorization from the District's voters to issue up to \$219,000,000 aggregate principal amount of the District's general obligation bonds (the "Bond Measure"). The election was conducted under Proposition 39, being chaptered as the Strict Accountability in Local School Construction Bonds Act of 2000, at Section 15264 et seq. of the Education Code of the State ("Prop 39"). Pursuant to Section 15278 of the Education Code, the District is now obligated to establish the committee to order to satisfy the accountability requirements of Prop 39. The Board of Trustees of the El Tejon Unified School District School District (the "Board") hereby establishes the Citizens' Bond Oversight Committee (the "Committee") which shall have the duties and rights set forth in these Bylaws. The Committee does not have independent legal capacity, from the District.

Section 2. Purposes. The purposes of the Committee are set forth in Prop 39, and these Bylaws are specifically made subject to the applicable provisions of Prop 39 as to the duties and rights of the Committee. The Committee shall be deemed to be subject to the Ralph M. Brown Public Meetings Act of the State of California and shall conduct its meetings in accordance with the provisions thereof. The District shall provide necessary administrative support to the Committee as shall be consistent with the Committee's purposes, as set forth in Prop 39.

The proceeds of general obligation bonds issued pursuant to the Election are hereinafter referred to as "bond proceeds." The Committee shall confine itself specifically to bond proceeds generated under the Bond Measure. Regular and deferred maintenance projects and all monies generated under other sources shall fall outside the scope of the Committee review.

Section 3. Duties. To carry out its stated purposes the Committee shall perform the following duties:

3.1 **Inform the Public.** The Committee shall inform the public concerning the District's expenditure of bond proceeds.

3.2 **Review Expenditures.** The Committee may review quarterly expenditure reports produced by the District to ensure that (a) bond proceeds are expended only for the purposes set forth in the Bond Measure; (b) no bond proceeds are used for any teacher or administrative salaries or other operating expenses.

3.3 **Annual Report.** The Committee shall present to the Board, in public session, an annual written report which shall include the following:

(a) A statement indicating whether the District is in compliance with the requirements of Article XIII A, Section 1(b)(3) of the California Constitution; and

(b) A summary of the Committee's proceedings and activities for the proceeding year.

3.4 Duties of the Board Superintendent. Either the Board or the Superintendent, as the Board shall determine, shall have following powers reserved to it, and the Committee shall have no jurisdiction over the following types of activities:

- (i) Approval of construction contracts;
- (ii) Approval of construction change orders;
- (iii) Appropriation of construction funds;
- (iv) Handling of all legal matters;
- (v) Approval of construction plans and schedules;
- (vi) Approval of Deferred Maintenance Plan; and
- (vii) Approval of the sale of bonds.

3.5 Voter-Approved Projects Only. In recognition of the fact that the Committee is charged with overseeing the expenditure of bond proceeds, the Board has not charged the Committee with responsibility for:

- (a) Projects financed through the State of California, developer fees, redevelopment tax increment, certificates of participation, lease/revenue bonds, the general fund or the sale of surplus property without bond proceeds shall be outside the authority of the Committee.
- (b) The establishment of priorities and order of construction for the bond projects shall be made by the Board in its sole discretion.
- (c) The selection of architects, engineers, soils engineers, construction managers, project managers, CEQA consultants and such other professional service firms as are required to complete the project based on District criteria established by the Board in its sole discretion.
- (d) The approval of the design for each project including exterior materials, paint color, interior finishes, site plan and construction methods (modular vs. permanent) by the Board in its sole discretion and shall report to the Committee on any cost saving techniques considered or adopted by the Board.
- (e) The selection of independent audit firm(s), performance audit consultants and such other consultants as are necessary to support the activities of the Committee.
- (f) The approval of an annual budget for the Committee that is sufficient to carry out the activities set forth in Prop 39 and included herein.

(g) The allocation Of State School Building Program grant funds to projects in the order and in the amount determined by the Board in its sole discretion.

(h) The adoption of a plan for publicizing the activities of the Committee and the determination as to whether a mailer, a newspaper notice or website materials would best suit the distribution of the Committee's findings and recommendations.

(i) The amendment or modification Of the Bylaws for the Committee as provided herein, subject to the legal requirements Of Proposition 39.

(j) The appointment or reappointment of qualified applicants to serve on the Committee, subject to legal limitations, and based on criteria adopted in the Board's sole discretion as part of carrying out its function under Prop 39.

3.6 Indemnification. The District will indemnify and hold harmless members of the Committee in the performance of their duties as described under this Section 3.0.

Section 4. Authorized Activities.

4.1 In order to perform the duties set forth in Section 3.0, the Committee may engage in the following authorized activities:

(a) Receive and review copies of the District's annual independent performance audit and annual independent financial audit, required by Article XIII A of the California Constitution.

(b) Inspect District facilities and grounds for which bond proceeds have been or will be expended, in accordance with any access procedure established by the District's Superintendent.

(c) Review copies of deferred maintenance proposal or plans developed by the District.

(d) Review efforts by the District to maximize bond proceeds by implementing various cost-saving measures.

Section 5. Membership.

5.1 Number. The Committee shall consist of a minimum of seven (7) members appointed by the Board of Trustees from a list of candidates submitting written applications, and based on criteria established by Prop 39, to wit:

One (1) member who is a parent or guardian of a child enrolled in the District.

One (1) member active in a business organization representing the business

- member of the CCOC.
4. *Elected Officials* - Elected officials are not eligible to be members of the CCOC.

D. Term

1. Members of the CCOC shall serve for a term of two years and for no more than two consecutive terms.
2. The community college student member may, at the discretion of the College President, serve up to six months after his or her graduation.

- E. Removal from membership - Members of the CCOC serve at the pleasure of the College President and may be removed at any time within the College President's sole discretion.

II. **Authority**

A. Authority and relationship of committees

1. *District Citizens' Oversight Committee*
 - a. Role - The role of the District Citizens' Oversight Committee is to inform the public concerning the District's expenditure of revenues received from the sale of bonds authorized by the voters on April 10, 2001. In particular, the Committee will provide oversight ensuring that
 - (1) bond revenues are expended only for the construction, reconstruction, rehabilitation, or replacement of college facilities, including the furnishing and equipping of college facilities, or the acquisition or lease of real property for college facilities; and
 - (2) no bond revenues are expended for any teacher or administrative salaries or other college operating expenses.
 - b. To carry out its role, the District Citizens' Oversight Committee may:
 - (1) receive and review copies of the annual independent performance audit conducted to ensure that the bond revenue has been expended only on the specific projects listed in the bond proposition;
 - (2) receive and review copies of the annual independent financial audit of the bond revenue;
 - (3) inspect college facilities and grounds to ensure that the bond revenue is expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution;
 - (4) receive and review copies of deferred maintenance

- B. Defense and indemnity - The District has a duty to defend and indemnify volunteers acting within the course and scope of their volunteer duties. In the event of litigation naming the CCOC, or the individual members, the Board of Trustees shall provide counsel for the CCOC, and shall promptly determine whether to provide counsel for individual members.

IV. **Bylaws**

- A. Bylaws - These bylaws are established for the CCOC and subject to the approval of the Chancellor.
- B. Amendments - Amendments to these bylaws must be approved by the Chancellor.

V. **Conduct of meetings**

- A. Meetings shall be held at least three times per year.
- B. Quorum - A quorum of the CCOC shall consist of a majority of members of the CCOC.
- C. Public meetings
 - 1. The CCOC is subject to the Ralph M. Brown Act. In light of this requirement, the CCOC will adopt schedules of meetings for at least six-month periods.
 - 2. Notices and agendas regarding the CCOC shall be posted in the same location as the location where notices and agendas regarding the Board of Trustees meetings.
 - 3. Each member will be given a current copy of the Ralph M. Brown Act by the Office of General Counsel. The Office of General Counsel shall have the responsibility to provide a briefing regarding the Brown Act at a regular meeting of the CCOC annually.
- D. Public Records - Minutes of the proceedings of the CCOC and all documents received and reports issued shall be a matter of public record.
- E. Except as otherwise provided by these bylaws or applicable law, meetings shall be conducted in accordance with *Robert's Rules of Order, Newly Revised*.