

CSBA Sample Board Policy

Facilities

BP 7214(a)

Comment [J1]: Updated to reflect new law which requires board to adopt debt management policy prior to issuing debt.

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.

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.**

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, but not** 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. **However, in 99 *Ops.Cal.Atty.Gen.* 18 (2016), the Attorney General, while reaffirming the 2005 opinion, clarified that costs incurred from hiring consultants for pre-election services could not be paid from bond proceeds.** 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: **Pursuant to Government Code 8855, as amended by SB 1029 (Ch. 307, Statutes of 2016), the Board is required to adopt a debt management policy prior to issuing any debt, including a general obligation bond. For sample policy language fulfilling this mandate, see BP 3470 - Debt Issuance and Management.**

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.

Comment [J2]: PSD Adopted the Debt Management Policy BP3470 in March 2017.

~~The Board shall determine the appropriate amount of the bonds in accordance with law. The Board's decision to order a bond election, as well as its determinations regarding the~~

appropriate amount, timing, and structure of the bond issuance, shall be consistent with law and the district's debt management policy.

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GENERAL OBLIGATION BONDS (continued)

(cf. 3470 - Debt Issuance and Management)

Note: Pursuant to Education Code 15100, as amended by AB 2116 (Ch. 129, Statutes of 2016), the following requirement applies to bond elections ordered by the Board regardless of whether the Board is seeking the 66.67 percent or 55 percent approval threshold.

Before ordering a bond election, the Board shall obtain reasonable and informed projections of assessed valuations that take into consideration projections of assessed property valuations made by the county assessor. (Education Code 15100)

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 elections ~~to~~ 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)

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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))

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GENERAL OBLIGATION BONDS (continued)

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~~ **Certification that** proceeds from the sale of the bonds **will** 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.

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

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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

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GENERAL OBLIGATION BONDS (continued)

Note: If the district has a general obligation bond approved ~~under~~ **according to** the 55 percent threshold **provisions**, 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

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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)

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GENERAL OBLIGATION BONDS (continued)

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)

Note: Items #1-10 below reflect the purposes for which funds generated from a general obligation bond authorized with 66.67 percent voter approval may be used, pursuant to Education Code 15100. Some of these purposes may be inconsistent with Article 13A, Section 1 of the California Constitution, which permits a district to raise funds in this manner only for the acquisition or improvement of real property. Districts should consult with legal counsel when determining whether to order a bond election for any of the purposes specified in Education Code 15100. The district may revise the following list to reflect the specific purposes authorized by the Board.

Subject to limits specified in Article 13A, Section 1 of the California Constitution, 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

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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

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GENERAL OBLIGATION BONDS (continued)

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 **an** order of the Board **and that is** entered into the minutes. (Education Code 15100)

Note: The following paragraph is optional. Although Education Code 15278 requires that the Board appoint a citizens' oversight committee if the district has a general obligation bond approved according to the 55 percent threshold provisions, 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. However, such districts ~~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

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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.

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.

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GENERAL OBLIGATION BONDS (continued)

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 manner in which** 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, the Board shall place an agenda item at a public meeting and adopt as part of the bond issuance resolution, or in a separate resolution, disclosures of the** available funding instruments, the costs and sustainability 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

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GENERAL OBLIGATION BONDS (continued)

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), **the resolution to be adopted by the Board shall include** items #1-4 above **as well as 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

Note: Government Code 8855 requires that the district report any proposed issuance of debt to the California Debt and Investment Advisory Commission (CDIAC) at least 30 days prior to the sale of the debt issue. Typically, bond counsel will file the report on behalf of the district. As amended by SB 1029 (Ch. 307, Statutes of 2016), Government Code 8855 requires that the report include a certification that the district has adopted a debt management policy and that the issuance is consistent with that policy. Pursuant to Government Code 8855, the district must also annually submit, on or before January 31, a report to the CDIAC regarding all outstanding debt and the use of the proceeds of the issued debt. See BP 3470 - Debt Issuance and Management.

At least 30 days prior to the sale of any debt issue, the Superintendent or designee shall submit a report of the proposed issuance to the California Debt and Investment Advisory Commission (CDIAC). (Government Code 8855)

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GENERAL OBLIGATION BONDS (continued)

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~~ **CDAIC**. (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.

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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.

Deposit of Bond Proceeds

Note: Pursuant to Education Code 15146, the proceeds of the sale of bonds, exclusive of any premium received, must be deposited in the county treasury to the credit of the building fund of the district. As

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GENERAL OBLIGATION BONDS (continued)

amended by AB 2738 (Ch. 472, Statutes of 2016), Education Code 15146 prohibits districts from withdrawing proceeds from the sale of bonds at any time for purposes of making investments outside the county treasury.

With regard to general obligation bonds, the district shall invest new money bond proceeds in the county treasury pool as required by law. (Education Code 15146)

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 Local** election
- 15372 Elections official certificate
- 1090-1099 Prohibitions applicable to specified officers
- 1125-1129 Incompatible activities

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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
CODE OF FEDERAL REGULATIONS, TITLE 17
240.10b-5 Prohibition against fraud or deceit
240.15c2-12 Municipal securities disclosure
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
99 Ops.Cal.Atty.Gen. 18 (2016)
88 Ops.Cal.Atty.Gen. 46 (2005)
87 Ops.Cal.Atty.Gen. 157 (2004)

Management Resources: (see next page)

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GENERAL OBLIGATION BONDS (continued)

Management Resources:

CSBA PUBLICATIONS
California's Challenge: Adequately Funding Education in the 21st Century, December 2015
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
GOVERNMENT FINANCE OFFICERS ASSOCIATION PUBLICATIONS
An Elected Official's Guide to Debt Issuance, 2nd Ed., 2016
Understanding Your Continuing Disclosure Responsibilities, Best Practice, September 2015
Investment of Bond Proceeds, Best Practice, September 2014
Selecting and Managing Municipal Advisors, Best Practice, February 2014
Debt Management Policy, Best Practice, October 2012
Analyzing and Issuing Refunding Bonds, Best Practice, 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>
Government Finance Officers Association: <http://www.gfoa.org>
Municipal Security Rulemaking Board, Electronic Municipal Market Access (EMMA): <http://www.emma.msrb.org>

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