Anton Jungherr

Little Hoover Commission Testimony September 22, 2016
Proposition 39 Citizens' Bond Oversight Committees
Suggestions for California Legislature

"We will ever strive for the ideals and sacred things of the city, both alone and with many; We will unceasingly seek to quicken the sense of public duty; We will revere and obey the city's laws; We will transmit this city not only less, but greater, better and more beautiful than it was transmitted to us." (Athenian Oath)

Carole D'Elia, Executive Director, Little Hoover Commission, July 29, 2016 in a letter to the author said, in part, "The Commission also is interested in any suggestions for improving bond oversight at the state level." Shown below are my suggestions:

Independent Auditors: Amend Education Code (EC) Section 15278 (b) to provide that the independent financial auditor and independent performance auditor shall report to the governing board and the citizens' oversight committee.

Role of Independent Auditors: Amend EC Section 15278 (b) to provide that the citizens' bond oversight committee shall have the authority to directed the independent performance auditor to perform "spot check" audits in real-time without waiting for the annual performance audit report.

Project Lists: Amend EC Section 15278 (b) to provide that the list of specific school facilities to be funded as required by the California Constitution (Article XIII, Section 1 (b) (3) (B) be specific so that it can be determined the amount of bonds monies proposed to be spend on specific school site(s).

Use of Bond Funds for Technology: Amend EC Section 15278 (b) to require all school bond issuance for technology have a weighted average maturity that doesn't exceed 120% of the average reasonably expected economic life of the financed project.

Bond Issuance: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can review whether an issuance of bonds is fiscally sound.

Temporary Investments: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can review whether temporary investment of bond funds is fiscally sound.

Effective Expenditure of Bond Funds: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can review and determine whether the spending of bond monies is being done in an efficient, effective and timely manner.

Disclaimer: The author of this testimony is speaking in his individual capacity and not as a representative of the California League of Bond Oversight Committees or the West Contra Costa Unified School District Citizens' Bond Oversight Committee. The recommendations expressed in this testimony are those of the author Anton Jungherr.

Financial Reports: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can receive and review financial reports (across all fiscal years) that display for each project and subproject by cost codes the: original budget, current budget, approved commitments to date, actual expenditures to date and budget balance.

Change Orders: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can receive and review information on change orders including the reason for the change and whether the cost of the change will be charged back to a contractor or architect.

Request for Auditor Proposals: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can receive and review the request for proposal(s) for the independent financial auditor and the independent performance auditor prior to the publication of the proposal(s).

Selection of Auditors: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can make recommendations to the governing board on the selection of the independent financial auditor and independent performance auditor.

Evaluation of Auditors: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can conduct an annual evaluation of the independent financial auditor and independent performance auditor.

Governing Board Response to Recommendations: Amend EC Section 15278 (c) to provide that the governing board shall publically respond to citizens' oversight committee recommendations within sixty (60) day of the presentation of the recommendation to the governing board.

Question: Amend EC Section 15278 (c) to provide that any member of the citizens' oversight committee can question district staff, contractors, consultants, vendors, auditors, architects, construction managers, financial advisors, bond underwriters, legal counsel and others involved in the bond school construction program.

Advice on Future Bond Sales: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can provide advice on future bond sales including preliminary designs, consultant selection, specifications and scope of work.

Ballot Measures: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can review and provide advice on future Proposition 39 ballot measures.

Issuing and Repaying Bonds: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can annually review district arrangement for issuing and repaying bonds.

Official Bond Statement: Amend EC Section 15278 (c) to provide that the citizens' oversight committee can receive and review drafts of Official Bond Statements.

Annual Report: Amend EC Section 15280 (b) to provide that the citizen's oversight committee annual report shall include:

- Whether the district is spending bond monies in an effective and efficient manner.
- District arrangement for issuing and repaying bonds.
- Adequacy of district technical and administrative support for the citizen's oversight committee.
- District compliance with Education Code Sections 15278, 15280, 15,282, 15284, 15286 and 15288.

Legal Counsel: Amend EC Section 15280 (a) (1) (c) to include independent legal counsel where the citizens' oversight committee is the client with attorney/client privileges.

Membership: Amend EC Section 15282 (a) to provide that one member appointed to the citizens' oversight committee shall have construction expertise and that one member shall have financial expertise. This recommendation is in lieu of the current two (2) at large members now required. The total minimum number of members would remain as seven (7) the same as current law.

Length of Term: Amend EC Section 15282 (a) to delete "minimum" so that it is clear that each term is for two years. Some districts have interpreted the current language to permit terms of more than two years as the current language reads, "… shall serve a **minimum** term of two years …."

Nominations: Amend EC Section 15282 (a) to provide that the four legally required positions be appointed from nominations made by each of the respective organizations specified (business organization, senior citizens' organization, taxpayers' organization, and parent-teacher organization).

Performance Audit Objectives Compliance and Program Effectiveness and Results: Amend EC Section 15286 to provide that bond measures in excess of $100,000,000 shall be required to have annual performance audits prepared in accordance with Government Auditing Standards objectives for compliance and program effectiveness and results.

Restraining Order: Amend EC Section 15284 (a) to delete language requiring that a citizen has to be an ad valorem taxpayer on real property to bring an action to obtain restraining order. This proposed amendment would permit any citizen to bring such an action.

Conflict of Interest/Unqualified Member: Amend EC Section 15284 (a) to add governing board appointment of a member with a possible conflict of interest or appears unqualified to serve as a member of a citizens' oversight committee.

Sanctions: Impose sanctions for school and community college districts that fail to adhere to constitutional and statutory requirements of Proposition 39, such as preventing the district from adopting future bond measures under the reduced voter threshold (Little Hoover Commission 2009 recommendation) and preventing the sale of unissued bonds

Anton Jungherr
jungherr3@aol.com
510.697.7212L cell

September 1, 2016

Attachments –

About Anton Jungherr

Education Code Sections 15278, 15280, 15282, 15284, 15286, 15288

Anton Jungherr

Anton Jungherr is a Board Member and Co-Founder of the California League of Bond Oversight Committees (CaLBOC) and has served previously as, Executive Director (volunteer), Corporate Secretary, and Corporate Treasurer.

He currently serves as a member of the West Contra Costa Unified School District Citizens' Bond Oversight Committee, is the Committee's Secretary and is a member of their Audit, Annual Report, Bylaws, Executive, Reports, Training and Website Subcommittees.

Mr. Jungherr inspired the *Anton Jungherr Award* which CaLBOC has presented annually since May 2014 for outstanding contribution and dedication to supporting citizen oversight. He was the first recipient of this annual CaLBOC award.

Anton Jungherr has extensive experience in the public and private sectors. He was the Founding Business Manager of Making Waves Academy a charter school in Richmond, California.

Mr. Jungherr also served as Associate Superintendent Berkeley Unified School District, CA; Deputy Superintendent for San Francisco Unified School District, CA; Deputy Superintendent of Yonkers School District, NY; Director of Finance for Newark, NJ, Assistant Superintendent for Pearl River School District, NY; Controller for Anchorage Public Schools, AK; Controller City of Anchorage, AK; and Assistant City Manager/City Clerk, Lake Forest, IL.

Mr. Jungherr started Triple Check Income Tax and Accounting Service with one client, which he met at his kitchen table, and build it to 500 clients. He subsequently sold this business and returned to the public sector.

Mr. Jungherr is the co-author, with Robert Alioto, of *Operational PPBS* (Planning-Programming-Budgeting-Systems) *for Education* (Harper & Row, Publishers), and appeared in both *Who's Who in the West* and *Who's Who in Finance*.

He earned his Master of Education degree in Educational Administration from Columbia University, and received a Master of Public Administration degree from Syracuse University. Mr. Jungherr also holds a Bachelor of Science degree in Business Administration and Accounting from the University of Connecticut. He is a Municipal Finance Officers Association Award Recipient.

August 30, 2016

EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] *(Title 1 enacted by Stats. 1976, Ch. 1010.)*

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] *(Division 1 enacted by Stats. 1976, Ch. 1010.)*

PART 10. SCHOOL BONDS [15100 - 17199.6] *(Part 10 repealed and added by Stats. 1996, Ch. 277, Sec. 2.)*

CHAPTER 1.5.
Strict Accountability in Local School Construction Bonds Act of 2000 [15264 - 15288] *(Chapter 1.5 added by Stats. 2000, Ch. 44, Sec. 3.)*

ARTICLE 2. Citizens' Oversight Committee [15278 - 15282] *(Article 2 added by Stats. 2000, Ch. 44, Sec. 3.)*

15278. (a) If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution is approved, the governing board of the school district or community college shall establish and appoint members to an independent citizens' oversight committee, pursuant to Section 15282, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.

(b) The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution. The citizens' oversight committee shall convene to provide oversight for, but not be limited to, both of the following:

(1) Ensuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Ensuring that, as prohibited by subparagraph (A) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, no funds are used for any teacher or administrative salaries or other school operating expenses.

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) 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.

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(3) 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.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) 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:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in schoolsite design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

(Added by Stats. 2000, Ch. 44, Sec. 3. Effective January 1, 2001.)

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ARTICLE 2. Citizens' Oversight Committee [15278 - 15282] *(Article 2 added by Stats. 2000, Ch. 44, Sec. 3.)*

15280. (a) (1) The governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee.

(2) The governing board of the district shall provide the citizens' oversight committee with responses to any and all findings, recommendations, and concerns addressed in the annual, independent financial and performance audits required by subparagraphs (C) and (D) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution within three months of receiving the audits.

(b) All citizens' oversight committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board of the district. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet Web site maintained by the governing board of the district.

(Amended by Stats. 2013, Ch. 91, Sec. 1. Effective January 1, 2014.)

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ARTICLE 2. Citizens' Oversight Committee [15278 - 15282] *(Article 2 added by Stats. 2000, Ch. 44, Sec. 3.)*

15282. (a) The citizens' oversight committee shall 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 citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the school district or community college district.

(2) One member shall be active in a senior citizens' organization.

(3) One member shall be active in a bona fide taxpayers' organization.

(4) 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.

(5) 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.

(b) An employee or official of the school district or community college district shall not be appointed to the citizens' oversight committee. A vendor, contractor, or consultant of the school district or community college district shall not be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code.

(Amended by Stats. 2013, Ch. 76, Sec. 27. Effective January 1, 2014.)

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ARTICLE 3. Bond Accountability [15284 - 15288] *(Article 3 added by Stats. 2000, Ch. 44, Sec. 3.)*

15284. (a) An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution may be maintained against any officer, agent, or other person acting on behalf of, that school district or community college district, by a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property within the school or community college district, or who has paid an ad valorem tax on real property within the school or community college district within one year before the commencement of the action if it appears by the complaint or affidavits that any of the following conditions are present:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.

(4) The governing board of a school district or community college has willfully failed to appoint the citizens' oversight committee in violation of the requirements of Section 15278.

(b) An action brought pursuant to this section shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.

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(c) The rights, remedies, or penalties established by this section are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.

(d) If an order is obtained to restrain and prevent an expenditure of funds pursuant to subdivision (a), a court may award attorneys' fees pursuant to Chapter 6 (commencing with Section 1021.5) of Title 14 of Part 2 of the Code of Civil Procedure.

(e) The action authorized by this section shall be known as a "School Bond Waste Prevention Action."

(Added by Stats. 2000, Ch. 44, Sec. 3. Effective January 1, 2001.)

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15286. Consistent with the provisions contained in subparagraphs (C) and (D) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the required annual, independent financial and performance audits for the preceding fiscal year shall be submitted to the citizens' oversight committee established pursuant to Section 15278 at the same time they are submitted to the school district or community college district, no later than March 31 of each year. These audits shall be conducted in accordance with the Government Auditing Standards issued by the Comptroller General of the United States for financial and performance audits.

(Amended by Stats. 2013, Ch. 91, Sec. 2. Effective January 1, 2014.)

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ARTICLE 3. Bond Accountability [15284 - 15288] *(Article 3 added by Stats. 2000, Ch. 44, Sec. 3.)*

15288. It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds.

(Added by Stats. 2000, Ch. 44, Sec. 3. Effective January 1, 2001.)

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