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September 2, 2016

Pedro Nava, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Dear Chairman Nava:

Thank you for inviting me to participate as a panelist in your hearing on bond oversight issues. It is an honor to provide you observations, personal experience and recommendations on how to strengthen citizen bond oversight.

While I am on the Board of Directors of the California League of Bond Oversight Committees, my written and oral testimony will be as an individual who has been Chair of the Sweetwater Union High School District Bond Oversight in San Diego County for over four years. This District's Bond Program was rocked over five years ago with a corruption scandal that was referred to as a "Pay to Play" environment in which bond oversight was severely lacking.

Sweetwater Bond Oversight has been transformed into an active independent role of committed volunteer citizens who are involved and engaged. This testimony will focus on how this type of bond oversight committee came about in Sweetwater so as to provide recommendations and observations to the Little Hoover Commission for improved and strengthened bond oversight.

This written testimony will be organized into the following sections:

- Summary
- Recommendations
- Background Sweetwater Union High School District
- Bond Oversight Effectiveness
- Concluding Remarks

Summary

The reason why Bond Oversight has become effective at the Sweetwater Union High School District is that there are nine committed members who understand their role, realize they are independent and it is their role to speak out, and they have sufficient tools/information to make their reports to the public. The primary tool used to assess the overall program effectiveness is an expanded performance audit.

Understanding their role and independence is not enough. There is an attitude if "I speak up maybe a difference could be made'. Committee members want to feel relevant in real bond oversight.

The Sweetwater Union High District should be commended for having a fair and open process for committee member selection, strong support for an expanded performance audit, and ongoing efforts to improve transparency. Effective bond oversight requires District "buy in" to the process.

Recommendations

Based upon my experience in bond oversight over the past 13 years, I recommend the following for further consideration and review by the Little Hoover Commission:

1. Availability of enhanced comprehensive training for all new Bond Oversight members

Discussion: While mandatory training could discourage applicants in smaller districts where it is difficult to get applicants, there is a need to encourage members to understand their role as committee members and the importance of being independent and "active" in their oversight. The importance of reviewing what was promised to the voters in the ballot language versus actual spending by the District must be highlighted as extremely important. A Training Program with a consistent message and content to members would provide greater continuity in bond oversight around the State.

2. Require Expanded Performance Audits prepared by Accounting experts in the field of design, construction, and project management

Discussion: Many Performance Audits just opine on two factors: 1) whether any bond dollars went to teachers salaries and operating expenses 2) whether bond dollars were spent on projects authorized by the voters. Such simple compliance audits do not address how effective the program is being managed or possible identifications of cost savings measures or improved effectiveness. The expanded Performance Audit has been an invaluable tool at Sweetwater in identifying process improvements. The consultants who did the work were not just Accountants/CPA's. They were familiar with Project Management and Construction.

3. Identify a process to Appeal the Selection of a Bond Oversight Committee Member.

Discussion: There is an inherent conflict of interest when the School District Trustees make the final selection on who will be on the committee, a committee which potentially could provide criticism of the Board and report this to the public. A separate local entity such as the County Office of Education might be a vehicle to challenge an appointment when there is a clear conflict or violation of the law. I have no "magic" solution but do recognize if the Board does not want a real independent oversight committee they can probably find a way to stack the deck in favor of compliant and passive oversight members.

4. Impose State sanctions if a School District is found not to be in Compliance with Proposition 39 Bond Requirements (e.g. spending money on unauthorized projects)

Discussion: Presently there are two methods for challenging the expenditures of a bond program: 1) a taxpayer can file a "School Bond Waste Fraud Prevention Action pursuant to Education Code Section 15284" which involves a restraining order before the expenditure

occurs 2) challenge the actual expenditure in court pursuant to civil litigation such as what was done in the "Hoover Light Case" (Taxpayers for Accountable Spending vs. San Diego Unified School District). There needs to be additional methods and remedies available to discourage such illegal expenditure if for instance discovered in a Performance Audit or review of information provided to CBOC.

5. Require the California State Auditor to conduct audits of Bond Programs including a process for requesting such Audits by a Bond Oversight Committee

Discussion: The funding, selection of consultants, scope of work, and implementation of Performance Audit Recommendations must be approved by the Board of Trustees and the CBOC has no direct authority to control the final work product. There needs to be some type of vehicle to report issues to a State Agency for consideration of an expanded Audit of a local school district.

6. Establish stricter conflict of interest requirements for Bond Oversight members

Discussion: By the nature of the legally required membership of a CBOC, there are specific "special interests" on a Committee (eg. Parent Representative). This is a good thing as a variety of views are a part of good bond oversight.

The Education Code specifically prohibits the following (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.

What can be problematic is when there are more than arms length personal relationships between Committee members and District staff/trustees. For instance, at the Sweetwater Union High School District a husband of a Board Trustee was on the CBOC and would have satisfied the conflict of interest clause in the Education Code cited above.

7. Encourage/Require School District's Provide a modest budget for a Citizen's Bond Oversight Committee.

Discussion: There are times when there may be issues that require independent assistance to the CBOC in which there would be a conflict of interest by using District staff/consultants. For instance, there could be a dispute over whether a particular expenditure was authorized by the voters that require legal advice. At present it is an option of whether the District would want to provide resources to select independent consultants. The Sweetwater Union High School District has adopted a modest budget for our CBOC.

8. Confirm the Citizen's Bond Oversight Committee has a role to play both before an expenditure is made not just after the fact.

Discussion: Some critics say Bond Oversight Committee overstep their role and should only focus on review and report on expenditures after the fact. This contrary to language in the Education Code that talks about the need to promptly form a Bond Committee after an election, the review of cost savings measures allowed, and over language and process identified in School Bond Waste Fraud Prevention Action pursuant to Education Code Section 15284".

Calboc Operating Guidelines state the following with respect to the Role of the Bond Oversight

Committee:

> *"The purpose of the Committee shall be to inform the public concerning the proper expenditure of the bond proceeds. The Bond Oversight Committee is both prospective and retrospective in nature and holds the District accountable for how the Bond money has been spent to "call out" where money has been spent inappropriately, and comment on proposed or pending District spending decisions i.e. the CBOC has the duty to comment on all expenditures whether proposed or actually spent."*

The more expansive view of Bond Oversight implies the heightened need for transparency from Districts on how they plan to spend the bond funds.

Background Sweetwater Union High School District

The Sweetwater Union High School District is the largest High School District in the State and fourth largest such District in the nation. Founded in 1920, the Sweetwater District has grown to more than 42,000 students in grades 7 through 12 and more than 32,000 adult learners. The district's 32 campuses are located in the cities of Chula Vista, Imperial Beach, National City and San Diego, including the communities of Bonita, Eastlake, Otay Mesa, San Ysidro and South San Diego. Its southern boundary straddles the Mexican border.

While the District is in much better hands now, this has not always been the case. The School District was involved along with several others in San Diego County of the largest corruption scandal in the history of San Diego. It was referred to as "Pay to Play" and was centered around the Bond Program and contracts.

The end result was as follows: 1) A total of 17 persons received convictions (9 staff/consultants, 8 Board Members from three District) 2) Two former Board members from Sweetwater got felonies 3) The former Superintendent and a Board member from Sweetwater served time in Jail. Examples of the convictions included offering something of value to a Board member, accepting gifts above the State limit, and failure to report gifts.

There was not active independent Bond Oversight during this period directly leading up to and during the corruption process. There was a Criminal Grand Jury convened prior to the corruption charges filed. Perhaps the best illustration of how Bond should not work is found in some verbatim Grand Jury Transcripts. The following are two select samples with highlights in bold for emphasis:

Testimony of Katy Wright (former member of Sweetwater bond program management staff)

> *Q. Um, kind of switching subjects a little bit. What is the purpose of the bond oversight committee? What do they do?*
>
> *A. A bond oversight committee --*
>
> *Q if you know.*
>
> *A. I do.*
>
> *Q. Thank you.*

A. I, um, the district that i work with now, let me say, has a bond oversight committee that, um, is -- they go through an interview process of a member of the public that is interested will apply, they will be interviewed and then the board will make the final decision as a board not, you know, in a public setting, and they will say yes or no or whatever.

And then in this district that I work in, the bond oversight committee meets monthly and we review with them everything;

Our business practices, our finances, our cash flow, our priority list, our performance, where we do great and where we stub our toe, the change order rates that might be too high, the problems that we have, everything. ***And then they report on a monthly basis to the board of trustees on hey, we have independently reviewed all this business, they look at our audits, they look at everything. It's very thorough.***

At Sweetwater, conversely, somehow individual board members select individual members through a process that is not transparent or public. So board member "an will select member of public based on whimsy. *I don't know. Then that member will show up and will be our bond oversight Committee representative at Sweetwater, I was part of the team, we1 reported to the bond oversight committee, it met Monthly.*

It was not very rigorous*. They did not report out to, um, to the board very often. But there was a couple of members early on that wanted that were trying to be supportive of staff, that wanted more information, all that, but that wasn't -- it wasn't entirely a rigorous process*

Q. Do you remember who was on that oversight committee or who were members that were in support or rigorous?

A. There was a guy, Marinovich i think was, trying to be supportive. I think that is his name. A guy named bill Ostrom early on.

Testimony of Henry Amigable (former employee of Gilbane/SGI-convicted of misdemeanor influence of public officials)

Q. Now, Yolanda Hernandez is a board member at San Ysidro?

A. Yolanda Hernandez is a board member at SanYsidro, yes.

Q. ***And Yolanda Hernandez, do you know whether or not she was also on the bond oversight committee?***

A. At

Q. At Sweetwater?

A. Yes, she was on the board, yeah, that's right, ***She was on the bond oversight committee for that Group.***

Q. ***And who are her -- if you know – political pals? Like who does she hang out with? Three women, that if you were trying to do anything you had to get their blessing was Yolanda Salcido (former Southwester College Trustee misdemeanor conviction related to bond program), Yolanda Hernandez (San Ysidro School District Trustee misdemeanor conviction related to bond program), and Pearl Quinones (former Sweetwater Trustee convicted felony related to bond program). So those three were the three people that palled around together, they were always doing things together. And if you crossed one, you crossed all three, so that is what I was told. And so I never tried to cross either one of***

them.

Q. And you were able to maintain good relationships with all three?

A. Yeah, I tried. I tried. I tried.

Today the entire Board has been replaced, public confidence is much better, the Board has embraced an expanded performance audit and there is a new Superintendent who has the support of the Community.

Bond Oversight Effectiveness

The purpose of this section is to outline those factors that have contributed to successful bond oversight at the Sweetwater Union High School District. They are as follows:

1. Treat the Application for Process for a Bond Oversight Member similar to an employment application. Our Committee is successful for one primary reason...it has a group of qualified committed individuals who understand the role of bond oversight. The District screens applicants for minimum requirements. There is an interview panel of District staff, outside agency staff, community members, and a CBOC representative.

The Independent Committee recommends to the Superintendent those for selection. The Superintendent then recommends to the Board for approval. The Board members are not involved in influencing the membership of the Committee.

2. Embrace Public Input. Perhaps because of the unique history of corruption at Sweetwater, there is heightened awareness and monitoring of the bond program. These citizens bring the corporate history to the table and can point out areas that require further review. Public input is encouraged at meetings.

3. Conduct frequent Site Tours of Facilities. The single most important process change that has occurred over the past four and half years has been the institution of frequent site tours prior to the formal CBOC meeting. While there is an opportunity for staff to showcase successful projects, the tours often focus on what areas have not have had improvements. This information is then compared to what was promised to voters. In the particular instance of Sweetwater, the Tours highlighted the significant differences in the physical quality of schools virtually miles apart. The CBOC directs what is to be viewed on the Tour.

4. Conduct an Expanded Performance Audit with Experts in the field of construction, design, bonds, and program management. The quality and level of analysis increase immensely when a firm was hired who understood construction. For many years our CBOC has recommended and the District has agreed to conduct an expanded performance audit which did not just review compliance but program effectiveness. Significant cost savings and efficiency measures have been identified and problems/issues surfaced. The expanded Performance Audit is the single most important tool to identify measures for a better bond program.

5. Provide a continual focus on comparing proposed and actual expenditures to the ballot language approved by the voters. This is the fundamental reason for bond oversight..are they spending the money as promised. What goes with this is the focus on how the District is prioritizing project expenditures consistent with the bond language. For instance if the introductory paragraph to the bond language emphasizes health life safety HVAC and classroom

improvements, it would not be appropriate to have a majority of expenditures on athletic improvements even though these improvements were one of many projects list for possible completion.

6. Instill the concept the Committee is supposed to be independent and ask a lot of probing questions. This concept can obviously not be legislated but it is made a lot easier by the selection of qualified people who are either trained or familiar with bond oversight. For our Committee the Chair leads the orientation and training and the concept of independence and specific legal charter is kept in mind. The CBOC is active in requesting information. There is a written Chair Report presented once a month and this report is sometimes brutally candid.

Concluding Remarks

There is not one magic bullet to improve bond oversight. However the basic foundation of what you need for effective bond oversight is to develop a system that results in a team of qualified independent individuals who want to be fair and speak out forcefully when necessary. Through proper training and tools such as effective audits they can report to the public on whether the bond dollars are spent properly.

We have seen what can happen what there is ineffective bond oversight such as existed a number of years ago at the Sweetwater Union High School District. The current CBOC is group the whole community and District can be proud of for their volunteer service. We serve as the law intended.

I look forward to my testimony before the Little Hoover Commission.

Sincerely,

Nick Marinovich, Chair
Sweetwater Union High School District

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September 2, 2016

Pedro Nava, Chairman
Little Hoover Commission
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Dear Chairman Nava:

Thank you for inviting me to participate as a panelist in your hearing on bond oversight issues. Under a separate letter, a detailed discussion was presented on the experience and lessons learned from the Sweetwater Union High School District Bond Oversight Committee. In its totality, the experience at Sweetwater has been a positive development in Bond Oversight.

In April 2013 I moved to La Mesa California to reside in the Grossmont Union High School District and also joined their Citizen's Bond Oversight Committee as the representative of a bona fide Taxpayers Organization (San Diego County Taxpayers Association). I continued to serve as Chair of the Sweetwater CBOC.

The two CBOC's were a contrast in how to do effective Bond Oversight and feel that your Commission needs to be pointed out there are District's around the State that unfortunately practice the type of Bond Oversight that exists at the Grossmont District.

Grossmont Union High School District serves the Eastern portion of San Diego County. It consists of about 22,000 students and covers the Cities of El Cajon, Lemon Grove, La Mesa, Santee, and many of the unincorporated communities such as Alpine and Spring Valley. Here are my summary observations of issues, which point out why we need those reforms outlined in the letter provided on the Sweetwater Union High School District:

1. The Grossmont CBOC does not provide active and independent Bond Oversight, but is largely a mouthpiece for supporting District decisions.

2. The District has expanded the scope and costs of project well beyond what was promised to voters.

3. The District has misled the Public and CBOC by establishing an "Official" Approved evolving District Master Plan which is different than the Original Master Plan which included the Projects approved by the voters and the legal document for determining appropriate bond expenditures.

4. The CBOC refuses to deal forthrightly with controversial or substantive issues such as legal costs associated with the Alpine High School Litigation or the project deviations associated with the Proposition U Bond Program.

5. The CBOC and District refused to support an Expanded Performance Audit until recently, even though it was required by a Board policy and best practice for effective Bond Oversight.

6. Site tours and critical evaluation of spending decisions are discouraged.

7. Public input is discouraged or marginalized.

8. Controversial or Policy Items are directed towards Subcommittees Favorable to the District View.

In June 2014 I resigned from the Bond Committee. The attached letter provides details on the rationale for my resignation. If time permits at the hearing and while my focus will be on specific areas of Bond Oversight that require improvement, I am happy to answer questions and provide details on the Grossmont experience. It is motivation for Bond Oversight reform.

I look forward to my testimony before the Little Hoover Commission.

Sincerely,

Nick Marinovich, Former Taxpayer Representative
Grossmont Union High School District

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July 10, 2014

Grossmont Union High School District
President Rob Shields
1100 Murray Drive
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Dear President Shields:

The purpose of this letter is to summarize my observations regarding your Bond Oversight function at the Grossmont Union High School District. I want to emphasize these comments are not intended to be a direct criticism at any individual, staffer, or Citizens Bond Oversight Committee (CBOC) member.

Frankly, this District at the policy level spends way too much time in attacking each other personally and I will not allow myself to get sucked into that approach. Likewise, I feel some public members also use this personal attack mode, which I do not feel is appropriate as well.

On June 19, 2014 I formally resigned from the Bond Oversight Committee as the San Diego County Taxpayers Association Representative. The resignation was largely prompted by extreme frustration in the lack of real critical bond oversight. Districts can get into trouble when they don't have an independent Bond Oversight Committee. I spent countless hours of volunteer work to hopefully ask some tough oversight questions and raise significant policy issues for discussion.

As a brief background, on June 13, 2013 your Board ratified my appointment to serve on the CBOC as the appointed representative for the San Diego County Taxpayers Association. My professional background is one of over 32 years of analytical and project management experience with the County of San Diego in facility planning, finance, consultant selection, fiscal/economic analysis and construction.

I served on an original Proposition BB Bond Oversight Committee for the Sweetwater Union High School District, have been on the current Sweetwater Union High School District CBOC since April 2012 and Chair since May 2012, was called as a Grand Jury Witness for the corruption trials (first person at a Board of Trustees meeting to raising concerns about how the Program management Consultant SGI was selected Sweetwater) and am on the Board of Directors of the California League of Bond Oversight Committees. I am leading an effort to develop Best Practices for Bond Oversight Committees for this Bond League.

The following is a partial list of the specific factors that led to my resignation:

The resistance to doing an Expanded Performance Audit. Very early in my tenure, I said the Performance Audit is one of the primary tools the CBOC can use to assess the Program. It also can be a mechanism to identify process improvement measures for the District Bond Program. Like most School Districts the Performance Audit addresses the most basic of analysis reviewing if the Bond funds were spent on allowable projects and that no funds were used for operating costs. Rather than embrace the idea, the Committee leadership said well let's do it in the future or maybe our Third Party Consultant could do it. Reasons were found not to do it. The question is why? What are you afraid of if things are ok? The expanded Performance Audit cost is nominal when you consider this is a multi million-dollar bond program.

Refusal to deal forthrightly with the Alpine High School Issue. Rather than conduct a rigorous analysis of spending decisions related to the twice Voter approved project, I was told at a Committee meeting by a member I was wasting the Committees time by bringing it up. A Grand Jury issues a scathing report on the District's decision and the CBOC pretends for months like it does not exist. Even if one feels that the High School was not the right project at this time, it behooved the Committee to review what was done in its place and determine whether the spending was proper. It is our business!

An overall aggressive bond debt program that did not generate real critical discussion on whether we should slow down. The fact that all future bonds must be Capital Appreciation Bonds, which count on relatively robust Assessed Value Growth, is cause for alarm. Undoubtedly your Assessed Value (AV) Growth will look good this year. Remind yourself it is only one year.

I am concerned with the optimistic growth projections of AV coupled with the uptick in Debt Service amounts in future years as the debt was not structured in an even debt service over time. This is a potential prescription for tax rates going above the voter approved limit if there is an another downturn. The District should know that the Tax Rate for Proposition H is well above the estimated amount in the Ballot Language. This is a very different world we live in post real estate collapse and I think a cautious approach is warranted.

Latest Selection of the Community Member At Large. A major caveat, this is not directed at Mark Zacovic. It is the position of President of Cuyamaca College being on the Bond Oversight Committee. I was at the Board meeting when community members who were not education field executives were interviewed and you make this choice? When I tell people what happened the reaction is universal: "You got to be kidding"? While it is not a legal conflict, choosing a Bond Oversight Committee member who is the head of Community College within District Boundaries is just not appropriate. It certainly does not send the message that you embrace independence.

Lack of questioning the selection and use of the Program Management Consultant. District staff's hourly rate is about half of the rate of the consultant Program Manager Gafcon. I was surprised to learn that the cost effectiveness of using in house staff was not reviewed earlier by the CBOC.

Furthermore when the District justified the sole source/carryover of the Gafcon from managing the Proposition H program to Proposition U, Government Code Section 53060

was used as the justification. Under normal circumstances the contract would have had to be competitively bid since they had served five years. Government Code Section 17956 says you must bid for such services accordingly.

Government Code Section 53060 permits a school district to contract for **special services** (emphasis added) and advice if such persons are trained to perform the special service required. In effect the District was saying that Gafcon was so special in what they do (Project/Construction Management) that there was no other firm that could step in to do the work. There are many firms that provide such services. I have looked at other Districts who use Government Code Section 53060 as justification. From what I have seen it is more typical for expert witnesses type functions, grant writers for a specific specialized program etc. Why did the CBOC not even critically question this decision?

A "Federal Case" is made out of my request for a tour of the Helix High Performing Arts Center. This Center has had cost issues raised and I wanted to actually see it. I was made to feel like I was imposing on somebody or something. The District should welcome a Bond Oversight Committee member who is engaged. I still have no position as I have not seen it!!

You do not know me that well. I can assure you I had a long career at the County by being a Team Player. I do not enjoy conflict or raising questions so I can ding somebody. I am a public servant, period! My experience on the Bond Oversight Committee was frankly horrible and frustrating. I finally threw the "Life is Too Short" Card and resigned after months of frustration and hard work. I am not going away, however, just residing in different venues.

Thank you for consideration of my comments.

Sincerely,

Nick Marinovich

Trustee Dick Hoy
Trustee Priscilla Schreiber
Trustee Jim Kelly
Trustee Jim Stieringer
Superintendent Ralf Swenson
Scott Patterson, Deputy Superintendent
Chris Cate, San Diego Taxpayers Association