

FI (6) Work step

Assess the responsibilities of the CBOC based on California Education Code and the California State Constitution and determine what actions taken by the CBOC may overstep their responsibility.

Related Allegation

GOV (3) –The CBOC has overstepped its legal responsibilities in providing oversight of the bond program

Results of Testing

VLS reviewed the legal authorizations for CBOC operations in Education Code Sections 15278 to 15282 and 15286 along with the expansion of legal authorizations found in Board Policy 7214.2, Citizens Bond Oversight Committee (CBOC), and compared these to VLS’s understanding of current CBOC operations.

Current Citizens Bond Oversight Committee Scope of Operations

The CBOC appears to have an extensive operating structure. In addition to the main CBOC, the committee has nine active subcommittees. There are two types, ad hoc subcommittees and standing subcommittees. Only the standing subcommittees have “continuing subject matter jurisdiction” and are subject to the Brown Act Open meeting requirements. Table 41 lists the active subcommittee names along with the type, purpose, and number of members of subcommittees.

Table 41: Listing of CBOC's Subcommittees as of April 2016

Number	Subcommittee Name	Type	Purpose	Number of Members
1	Annual Report	Ad hoc	Prepare the annual calendar report for approval by the CBOC.	4
2	Audit	Standing	<p>Receive and review annual bond performance audit and bond financial audit, and agreed upon procedures engagement reports. Monitor the implementations of recommendations made by the auditor. Review the District's plans for bond sales, review cost savings measures, construction costs, change orders and preventative facilities maintenance.</p> <p>To understand the change order process, design and review reports that will assist the CBOC to understand and analyze "hard costs" on construction projects and make recommendations on how to reduce cost of change orders.³⁰⁵</p> <p>Understanding and reviewing "soft costs," Reviewing efforts by the school district to maximize bond revenues by implementing cost-saving measures.³⁰⁶</p>	7
3	Bylaws	Ad hoc	Draft and recommend By-laws amendments to the CBOC for approval.	4
4	Executive	Ad hoc	Prepare meeting agendas and minutes and provide leadership to achieve the CBOC's purpose.	3
5	Reports	Ad hoc	Work with the District staff to mutually agree on the reports and their formats to be reviewed monthly by the CBOC.	4
6	Pinole Valley HS	Ad hoc	Monitor the construction of Pinole Valley High School.	6
7	Site Tours	Ad hoc	Inspect school sites to ensure quality of construction, cost savings measures and change orders	5
8	Training	Ad hoc	Orient new members, prepare training materials and provide ongoing training for all CBOC Members.	2
9	Website	Ad hoc	Design, monitor design implementation by District staff, and maintain current the website contents	4

The CBOC and some of its Subcommittees have designated District staff liaisons that support it in conducting its oversight of the school construction Bond Program. However, District staff do not currently track time devoted to supporting CBOC. The CBOC Annual Report for 2015, dated 6/22/2016, lists 18 District staff members and outside consultants who provide support for CBOC activities to some degree.

³⁰⁵ This purpose was stated for the Change Orders Subcommittee, which merged with Cost Savings Subcommittee in August 2015. The Cost Savings Subcommittee in turn merged with the Audit Subcommittee in October 2015.

³⁰⁶ This purpose was stated for the Cost Savings Subcommittee, which merged with Audit Subcommittee in October 2015.

The main CBOC meets once a month. The Audit and the Reports Subcommittees each meet twice a month. The other Sub-Committees do not have set schedules. CBOC itself and the Audit Subcommittee are designated as standing committees subject to the Brown Act provisions regarding notice, transparency and public disclosure. The remaining subcommittees are designated as “Ad hoc” committees not subject to the Brown Act.

In addition to staff support, the CBOC also has an attorney assigned at District expense. The monthly agenda and packet for the CBOC meetings generally totals over 140 pages. Approximately 60 to 70 pages of this are staff reports to the CBOC. Several staff members have indicated that support to the CBOC requires a substantial commitment of time that may impact time devoted to the accomplishment of the objectives of the bond program. However, the amount of resources in the way of District Bond Program staff time used to support the CBOC request is not currently being tracked or quantified.

California Education Code and California State Constitution Requirements

Legal provisions regarding CBOC are as follows:

- **California Education Code:** The authority and requirement for the establishment and operation of CBOCs came in legislation that implemented Proposition 39 (the “Strict Accountability in Local School Construction Bonds Act of 2000”). This legislation dealt with a range of implementation issues such as maximum tax rates, ballot language, fraud prevention actions, etc., and it also dealt with the establishment and operations of CBOCs. There have been several amendments to the legislation over the years such as greater definition of Performance Audit requirements and delivery of audit reports to CBOCs. Specific code sections dealing directly with CBOCs are in Education Code Sections 15278 to 15282 and 15286.
- **California State Constitution:** Proposition 39 approved by the voters in 2000 amended Article 13 A of the State Constitution to allow for approval of District bonds with a 55% majority. It requires such bond measures to include a specific list of projects when presented to the voters. It also requires that expenditures of the proceeds shall only be spent on the projects approved by voters and not on salaries for teachers and administrators or other operating expenses. Proposition 39 also requires annual financial and performance audits until the bond funds are expended. There is no reference to CBOC committees in Article 13 A. Article 16, section 18(b) also includes reference to bonds approved by 55% of the voters but makes no reference to CBOCs either.

District Board Policy Governing CBOC Operations

Board Policy (BP) 7214.2 Citizens Oversight Committee (CBOC) is intended to provide an orderly framework for the operation and furtherance of CBOC’s purpose in the District. The current

policy on the GAMUT website where District policies are maintained indicates the last revision was in December 2015.

The Board Policy is required to be consistent with Education Code (EC) Sections 15278-15282 and 15286 governing CBOC formation and operation. A major part of the Board Policy restates the provisions of these Education Code sections. In addition, the policy provides tailoring and context for operation of the CBOC in the West Contra Costa County Unified School District. This additional direction, in some cases, expands the scope of CBOC requirements beyond the basic requirements enumerated in the Education Code. Examples include the following:

- **Size of CBOC:** Education Code Section (EC) 15282 requires a minimum of seven members representing selected groups. BP 7214.2 establishes the CBOC member size as seventeen including the required seven members enumerated in EC 15282. This is allowed under Education Code 15282.
- **CBOC Bylaws:** BP 7214.2 requires the CBOC to adopt bylaws and operating rules which are in conformance with Board policies and applicable laws. This is not addressed in Education Codes 15278-15286. However, this is widely considered good practice to allow greater cohesion and to avoid potential conflicts.
- **Role in Audit Report Review-** EC 15276 only provides for the CBOC receiving and reviewing the financial and performance audit reports and EC 15286 only provides for distribution of audit reports to the CBOC at the same time they are delivered to the District. BP 7214.2 expands this role to include:
 - 1) The Auditor shall deliver directly to the [CBOC's] Audit Subcommittee a draft copy of each audit report at the same time as delivery of the draft is made to the District.
 - 2) The Auditor shall deliver directly to the Committee progress reports at the same time as these reports are issued to the District.
 - 3) The Committee shall participate with the District in a yearly review of the Auditor's performance.

Conclusions

VLS's review found three areas where the District may want to more effectively utilize District resources and add transparency in support of the CBOC's objectives.

In February 2016, the CBOC requested that the District develop 11 monthly reports in conjunction with its ad hoc Reports Subcommittee. As mentioned before, an ad hoc subcommittee is not subject to the provisions of the Brown Act. Subsection(c) of Education Code 15278, which enumerates the activities a CBOC may engage in, does not include such tailored

reports. Furthermore, the District Board Policy BP7214.2 states that the CBOC shall not have the authority to require the District to prepare reports or conduct audits more frequently than those required by law. District staff and the CBOC's Reports subcommittee have been meeting twice monthly and it appears the originally requested reports will change and grow over time. The District, with CBOC's input, should evaluate and determine whether the value of the reports is appropriate for the time and effort necessary to continue development and maintenance, and provision of these reports to the CBOC. See FI6-1 recommendation for this area.

Education Code Section 15280 (a) (1) provides that the governing board of the District shall, without expending bond funds, provide the CBOC with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the CBOC. Board Policy BP 7214.2 restates these provisions and provides that the Assistant Superintendent shall serve as a resource to the committee and assign such other District staff and professional service providers as needed to assist the committee in carrying out its duties. This provides sufficient authority for coordination of needed support. However, BP 7214.2 also contains a duplicative instruction which states that the committee shall have authority to contact District staff, District contractors or consultants including without limitation, accountants, auditors, architects, financial advisors, and legal counsel in coordination with the District Superintendent or designee. For the sake of clarity, the District should revise the policy to provide one clear statement for use of District staff and District vendors rather than two statements. It would also be prudent to remove the provision "without limitation" since the Education Code provides for necessary technical assistance. The "without limitation" wording could result in less than optimal use of public funds. See FI6-2 recommendation for this area.

The District may also consider establishing a separate visible budget for support of the CBOC and its Subcommittees under the direction of a District official and charge time and cost of support of the CBOC to that budget. This would provide a more transparent picture of operations for CBOC members, the District Board, and the public. The CBOC needs to have more effective accountability in ensuring that any requests and demands of time for District staff are an efficient and effective way of utilizing staff resources. See FI6-3 recommendation for this area.

Recommendations

FI6-1. The District and CBOC should evaluate the value (frequency and type) of proposed monthly reporting against the ongoing cost of development and maintenance of the reports as this is not required under the Education Code enumerated duties of a CBOC and runs counter to the existing statement of Board policy.

FI6-2. The District should consider merging the two statements currently in board policy on use of District resources in support of CBOC into one clear statement. The District

should also consider removing the statement “without limit” from the policy to eliminate ambiguity about which District resources are committed to support the CBOC. Having a “without limit” statement in this policy can result in less than optimum use of District resources.

- FI6-3. As required by Education Code Section 15280 (a) (1), Bond Program resources should not be used to support the CBOC. The CBOC in conjunction with the District should establish a visible separate budget under a District official and charge District time and cost incurred by District staff to support the CBOC in order to provide a transparent and accountable picture to the CBOC members, the District Board, and the public.

Response by District

- FI6-1. The District agrees with the recommendation.
- FI6-2. District staff will make a recommendation to the Board’s Governance Subcommittee to review Board Policy 7214.2 and the auditor’s recommendations.
- FI6-3. The District agrees with this recommendation and will evaluate the resources needed to support the CBOC.

VLS’s Assessment of Response by District

VLS has reviewed the District response to VLS’s recommendations and acknowledges the District’s agreement to the recommendations by VLS.