

**SUMMARY OF PROPOSITION 39 AND RELATED LEGISLATION**

**BY BILL KADI**

On November 7, 2000, California voters decided to reduce the voter approval threshold for school district and community college district general obligation bonds from two-thirds (2/3) voter approval to 55% voter approval. Proposition 39 amends article XVIII A of the California Constitution to allow for the levy of *ad valorem* taxes on real property in excess of the one percent (1%) limit to pay debt service on bonds issued for school construction with the approval of 55% of the votes cast.

The Legislature enacted Assembly Bill 1908 (AB 1908), Lempert, which establishes the issuance procedure for bonds authorized at an election requiring only 55% voter approval, rather than two-thirds. (Stats. 2000, ch. 44, effective January 1, 2001). The statute, by its terms, became operative upon the passage of Proposition 39 by the voters. AB 1908 sets forth some important restrictions on the issuance of bonds that have been approved in an election requiring a 55% approval rate. More recently, AB 2659 was passed by the legislature, was signed by the Governor on September 22, 2000, and filed with the Secretary of State on September 23, 2000. AB 2659 amends certain provisions of AB 1908, as discussed below.

**Analysis of the Initiative and Legislation**

*Proposition 39*

*Proposition 39 amends portions of the California Constitution to provide for the issuance of general obligation bonds by school districts, community college districts, or county offices of education "for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities" upon approval by 55% of the electorate. The local ballot measure must: 1) list the specific school facilities projects to be funded, and must certify that the governing board has evaluated safety, class size reduction and information technology needs in developing the list; 2) require that the governing board conduct an annual independent performance audit to ensure that the funds have been expended only on the specific projects listed; and 3) require that the governing board conduct an annual independent financial audit of the bond proceeds until all of the proceeds have been expended.<sup>(1)</sup>*

*Assembly Bill 1908*

*AB 1908, as amended by AB 2659, provides the issuance procedure for bonds approved by a 55% vote. The legislation does not replace existing law that provides for the issuance of general obligation bonds approved by a two-thirds vote, but it allows the governing board to make a choice between the existing and new procedures at the time it calls the election. A school board may only proceed under the 55% election process upon a two-thirds vote of the Board members. Once a board decides to utilize the 55% bond option, it may not subsequently opt out of that procedure, even if the proposition ultimately obtains two-thirds voter approval.*

*Assembly Bill 2659*

*AB 2659 amends the tax rate limitation contained in AB 1908 by transforming what had been an absolute cap on the tax rate that may be levied to pay debt service on the bonds approved at a particular election to the following: a district may only issue bonds using the Prop. 39 55% voter approval procedure if the district projects, at the time of issuance of the bonds, that the tax rate needed to pay debt service on the bonds will not, taking into account any increases in the tax base allowed under Prop. 13, exceed the applicable limit (\$60 per \$100,000 for unified school districts, \$30 per \$100,000 for elementary and high school districts).<sup>(2)</sup>*

**Opportunities and Limitations.**

*There are both opportunities and limitations associated with the new 55% bond approval process contained in Proposition 39 and AB 1908/AB 2659. School and community college districts should consider the following.*

**Opportunities.**

Opportunities created by the new scheme include the following:

1. Lower Voter Approval Threshold.

Districts that have been unsuccessful in gaining the support of two-thirds of their electorate may be able to gain sufficient support with a 55% threshold.

2. Expanded Use of Bond Proceeds — Equipment and Furnishings Permitted.

While Proposition 39 requires districts to specify more precisely the projects for which bond proceeds will be spent, it also specifically allows bond proceeds to be used to equip and furnish school facilities. The law in effect prior to the passage of Prop. 39 only permitted general obligation bond proceeds to be spent on the "acquisition and improvement of real property," which excludes furniture and equipment not attached to the real property as "fixtures."

**Limitations.**

Limitations imposed on districts wishing to take advantage of a lower voter approval threshold include the following:

1. Fewer Available Election Dates.

Election dates for a 55% voter approval bond election are limited to: (1) statewide primary or general elections; (2) regularly scheduled local elections; or (3) statewide special elections. Statewide election dates only occur in March and November in even-numbered years (Elections Code Section 1001). Therefore, except in the case of a special statewide election (which can only be called by the Governor), districts may only hold 55% elections on regularly scheduled local election dates and statewide elections held in March and November of even-numbered years.

In contrast, bond elections utilizing the 2/3rds approval procedures may be held on almost any Tuesday during the year.

2. Restriction On The Projected Amount Of The Property Tax That May Be Levied On Each Property Owner To Pay Debt Service On The Bonds

Under AB 2659, non-unified school districts must project that a property tax levy needed to pay debt service on the bonds will not exceed thirty dollars (\$30) for each hundred thousand dollars (\$100,000) of assessed value of taxable property. Unified school districts must project a tax levy not in excess of sixty dollars (\$60) for each \$100,000 of assessed value of taxable property. Community college districts must project that a tax levy will not exceed twenty-five dollars (\$25) for each \$100,000 of assessed value of taxable property. **But note that these projected limitations apply only to the bonds approved at each election, so that a district could, through a series of elections, project an overall tax levy of multiples of the \$30/\$60 limit.** Note also that these projected limits do not apply to bonds approved prior to the passage of Prop. 39, nor is the tax rate levied to pay bonds approved after Prop. 39 by a two-thirds vote to be aggregated with the tax rate applied to bonds issued under the provisions of Prop. 39.

3. Appointment Of An Independent Citizen's Oversight Committee To Monitor Bond Expenditures.

The 55% bond approval option requires the appointment of an independent citizen's oversight committee (Oversight Committee) within sixty (60) days of the date the governing board enters the election results into its minutes. The purpose of the Oversight Committee is to inform the public concerning the expenditure of bond revenues. It must have authority to review bond expenditures and audits, inspect school facilities, and review deferred maintenance, facilities, and cost-savings plans and proposals for the purpose of informing the public. Although some districts voluntarily appoint an oversight committee to monitor the expenditure of bond proceeds, with two-thirds bond approval there is no legal requirement to do so.

The Oversight Committee must include at least seven members who serve for no more than two consecutive two-year terms without compensation. Members must represent a cross-section of the district's population, including various communities within the district, as specified in the legislation. No employee or official of the district may be appointed to the Oversight Committee. Meetings of the Oversight Committee are open to the public, with notice provided in the same manner as for meetings of a district governing board.

4. New Legal Actions To Prevent Or Restrain The Expenditure Of Bond Funds.

The legislation creates a form of legal action called a "School Bond Waste Prevention Action" which may

be brought by a citizen who is assessed and required to pay an ad valorem tax to repay bonds issued pursuant to the 55% bond approval option. In order to prevail, the citizen must show that the challenged expenditure of bond funds is not in compliance with the law, that the expenditure will produce waste or great or irreparable injury, or that the governing board has willfully failed to appoint an Oversight Committee. This legal remedy supplements existing remedies to challenge school bond elections and expenditures.

1. Proposition No. 39 also contains a charter school component. This component of Prop. 39 requires every school district to make available to all charter schools facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in regular public schools, and the facilities must be "contiguous, furnished and equipped." The school district may charge the charter school a pro-rata share of the school district's facilities costs as specified in the legislation. The facilities requirement takes effect three years from the date of the measure or, if the school district passes a general obligation bond measure, the first day of July following passage.
2. AB 2659 amends Section 15268 of the Education Code (added by AB 1908), for example, to read, in pertinent part, as follows: "The bonds may only be issued if the tax rate levied . . . [to pay debt service on the bonds approved] . . . at a single election, would not exceed . . . [\$30 per \$100,000] . . . of taxable property when assessed valuation is projected by the district to increase in accordance with . . . [Prop. 13]."

If you wish to discuss the impact of Proposition 39 and related legislation on your decision process call us at (415) 391-5780, ask for [Bill Kadi](#) , [Chick Adams](#) or [Bill Madison](#).