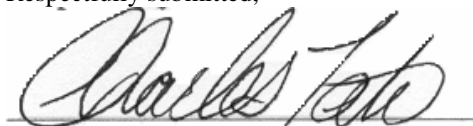


SJUSD 2002 Measure F Citizens' Bond Oversight Committee
Report to Residents and Taxpayers
Approved: December 16, 2002 Issued: January 12, 2003

We, the members of the San Jose Unified School District Measure F Citizens' Independent Bond Oversight Committee (the Committee), submit this report to the residents, voters and taxpayers in the San Jose Unified School District (the District). This report is issued in conformance with the Strict Accountability in Local School Construction Bonds Act of 2000 (Strict Accountability Act), requiring that the School District Board of Trustees (School Board) form an independent citizens' oversight committee, and that this committee report to the public on the proper expenditure of bond funds at least once annually.

The Committee wishes to thank the District staff and the School Board members who have so diligently worked with us to set up our processes to ensure that vigorous and independent oversight will endure throughout the lifetime of the ballot measure. We appreciate this opportunity to serve the children, voters, and taxpayers in the San Jose Unified School District.

Respectfully submitted,



Charles Tate, Chair
San Jose Unified School District 2002 Measure F
Citizens' Bond Oversight Committee
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I. Executive Summary

The Measure F Citizens' Bond Oversight Committee was formed in June 2002 as a result of the passage of San Jose Unified School District Bond Measure F under Proposition 39 rules which allowed for the passage of the bond measure with a 55% vote as opposed to a 2/3 vote required under Proposition 13. The District must adhere to strict accountability guidelines in the execution of the bond spending per Proposition 39 including the formation of this Committee. Bond Measure F, a \$429M bond authorization, was passed by the voters in San Jose Unified School District in March 2002, for repair and rehabilitation of aging classrooms, classroom modernization and school site improvements.

The Committee is appointed by the School Board and is fundamentally charged by state law to review the District's use of Measure F funds and to inform the public about those uses. The Committee also has other responsibilities relating to overseeing the efficient use of Measure F funds.

The School District is in the process of developing a Master Implementation Plan for Measure F projects. The Plan is projected to be completed in June 2003. Until that time—that is, until the time the Committee and the public know the full scope of bond projects—the School Board has agreed to a spending limit of no more than 5% of bond proceeds. Pre-Plan projects approved by the Board are subject to a spending exception process until the Plan is approved.

The District has issued \$84 million of the bonds to date. The Board of Trustees has approved several projects under the exception process including acquisition of land for Empire Gardens School, and a contract to develop the Master Implementation Plan. In addition, the Board has approved spending on the planning and construction of a preschool on a section of the San Jose High School campus under a financing arrangement that it intends to repay with Measure F funds.

Some members of the Committee have questioned whether preschool projects to be built on existing campuses were presented to the voters in the March 2002 ballot. The Committee is continuing to investigate this issue pursuant to a determination. A second controversial issue concerns the District's intention to spend at least \$20 million for "specialized instructional programs" and whether this spending was disclosed in the ballot measure.

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Finally, the Committee, through ad-hoc subcommittees, is carrying out and has completed several administrative tasks. Completed tasks include the creation of a Code of Conduct, By-Laws, and Meeting Guidelines that were all adopted by the Committee, and the design of a web site to make Committee documents and information available and accessible to the public. Ongoing sub-committee activities include reviewing the District's bid process and Deferred Maintenance program, and selecting auditors for Bond Measure F spending and project performance audits.

II. Background

A. Proposition 39 and the Strict Accountability Act

Before Proposition 39 was passed by the voters in 2000, all local school bonds had to be passed by a 2/3 vote of the electorate, as required by Proposition 13. Proposition 39 amended the state Constitution to create a new kind of school bond – one that could be passed by a 55% vote, provided that the school district adhere to a number of strict accountability measures, including community oversight.

Specifically, California Constitution article XIII A and a supplemental Strict Accountability Act impose accountability requirements including the following:

- An independent citizens' bond oversight committee must be formed, and the committee must review and report on the proper expenditures of bond funds. The committee meetings are subject to the Brown act and any reports received or produced by the committee are open to the public.
- The School Board must provide the committee with any needed technical and administrative assistance and sufficient resources to publicize committee reports to the public.
- The committee must include at least seven members, and must include seniors, a representative from a taxpayer association, a student, business people, and community members. District employees, officials, vendors, contractors, and consultants are not eligible for membership on the independent committee.
- An annual independent financial audit must be performed.
- An annual independent performance audit must be performed to ensure that money is spent only on the specific facilities projects listed in the ballot measure.-
- The ballot measure must contain a list of specific facilities projects to be funded from the bond.
- The Board of Trustees must ensure that bond money is spent only on the specific facilities projects listed on the ballot prior to the election.
- The Board of Trustees must evaluate safety, class size reduction, and information technology needs in developing that list.
- Any taxpayer in the district may file an expedited lawsuit in superior court to prevent unlawful expenditure of bond funds by the school district.
- Bond monies may not be spent for teacher or administrator salaries or other district operating expenses and are limited to 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.

B. Measure F

In March 2002 the voters in the San Jose Unified School District approved "Measure F," a bond measure authorized under Proposition 39, in which they were asked:

"To complete the repair and rehabilitation of local schools, including health and safety repairs, and qualify for State matching funds, shall the San Jose Unified School District, with annual audits and citizens oversight, upgrade inadequate plumbing, electrical, heating and ventilation systems, replace portable classrooms, renovate children's restrooms, repair deteriorating roofs, remove asbestos, repair dry rot, upgrade science labs, modernize classrooms, and improve school sites by issuing \$429,000,000 of bonds within legal interest rates?"

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A school-by-school list of specific facilities projects was also included in the ballot. This list can be found in the Measure F section of the District website (http://www.sjUSD.k12.ca.us/bond_project/bondproject.htm)

C. The Committee's Responsibility and Authority.

The Committee's responsibility is straightforward. We are charged by-law to review the use of Measure F proceeds and to inform the public about the proper use of their tax dollars. In addition, members of the Committee may provide opinions concerning project priorities, efficient use of space and funds, and quality-related issues, as may any member of the public.

The Committee is a watchdog group, and does not craft education policy or authorize the expenditure of taxpayer funds. It is a group of independent, concerned members of the District community donating time to help ensure that expenditures of Measure F funds are made in accordance with Proposition 39 and the Strict Accountability Act. The Committee will actively exercise its mandate for oversight and communicate its findings on a regular basis.

III. Expenditures of Measure F Bond Money to Date

The Board of Trustees has approved only limited expenditures of bond money to date. The Board has agreed not to spend more than 5% of the voter authorized amount of the bond money until a Master Implementation Plan (discussed below) is completed and adopted. Until then, the Board has agreed to limit spending of bond money to no more than \$21,429,000, and only for "exceptional" projects. Exceptional projects are those for which:

- delay of the project would prevent the scheduled start of instruction to students;
- delay of the project would add cost (other than inflationary costs) to the project;
- delay of the project would prevent the District from meeting obligations to other funding agencies that are supporting the project. (Leveraging partnerships and state funding reduces the amount of district resources required to support the facilities renovation and improvement.)

Although the ballot contained a general list of repair and rehabilitation projects, the Board has not yet determined exactly how the bond money will be spent. A more detailed level of planning regarding facilities needs and construction costs must be completed before full scale construction can begin. The bond sales expenditures that have been approved or at least endorsed by the School Board to date are discussed here.

1. Issuance of bonds to date.

On July 24, 2002, the District sold \$84 million of general obligation bonds authorized under Bond Measure F. The true interest cost of the bond issuance was 4.66% as opposed to the estimate of 6.02% used for the election estimate in March, 2002. The bonds received ratings of Aa3, AA, and AA- from Moody's Investor Services, Fitch Ratings, and Standard and Poors, respectively.

2. Empire Gardens Elementary School

The Committee endorsed by unanimous vote a recommendation that the School Board spend \$600,000 for real estate acquisition to expand the Empire Gardens School site.

3. Turner Construction Co.

The Committee endorsed by unanimous vote, a recommendation that the School Board pay \$2,600,000 to Turner Construction Co. for the development of the Master Implementation Plan. The actual contract amount was negotiated to \$2,040,000.

4. Family Early Learning Center and Preschool at San Jose High School

Though not yet an official expenditure of Measure F funds, we feel obligated to report on the potential for the District to use, at a future time, Measure F funds for the development of new preschool centers. In order to initiate planning and construction of the new preschool centers, the first of which is to be located

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on the San Jose High School campus, the School Board, by a 4-1 vote, approved using a lease purchase financing arrangement from the state known as a "certificates of participation" (COP). The District intends to repay the preschool portion only of this financing arrangement with Measure F funds. Recognizing the controversy over funding the preschools with Measure F, District staff states that alternate funding sources for the San Jose High location have been identified, including lease revenue from the new facility paid to the general fund.

When the District informed the Committee of the Family Early Learning Centers and planned preschool facilities, some members of the public and some Committee members expressed a concern that it was imprudent of the Board to pay for the centers under an assumption that Measure F funds may be used for repayment. The concern is that District staff has indicated to the Committee on numerous occasions that bond revenues may be insufficient to pay for all core repair and rehabilitation projects for existing facilities.

Discussion of the Early Learning Center and preschool issue within the Committee has focused on whether the Measure F ballot language can be and should be interpreted as having disclosed to the voters that the District intended to use the tax money to construct an array of new preschools on existing school campuses. For example, the projects listed on the ballot for the San Jose High School site did not list the construction of a new preschool. Preschool construction was limited to a brief mention on the ballot under the heading of "District Facilities." Meeting discussions indicate that the Committee is divided on this issue, but it is in the process of gathering additional information from the District and other sources to make a determination.

The Superintendent has indicated that providing Family Early Learning Centers and preschools is one of the District's highest priorities. We wish to emphasize that the Committee does not take a position on the District's venture into preschool education and Family Early Learning Centers. The Committee does not wish to second guess operational priorities of the District. The question before the Committee is a narrow and specific one: Is expenditure of Measure F funds for preschools and Family Early Learning Centers authorized by the voters through the passage of Bond Measure F? The Committee will continue to discuss this issue and report to the public accordingly.

In response to this issue, at its August 5 meeting the Committee formally recommended by a unanimous vote "...that the Board of Education proceed with caution before approving expenditures of Measure F funds on any project not specifically listed in the ballot measure because the Committee is concerned that such discretionary expenditures may be unlawful. In addition, CBOC asks the Board to refrain from authorizing expenditures of Measure F funds until the Implementation Plan is developed and reviewed by the Committee, unless such expenditures are urgent in nature."

Subsequent to the School Board's vote to use COP funding for the preschool, anticipating repayment through Measure F, the Committee asked the School Board to add language to the exception process further limiting the Board from allocating temporary funding to projects which may contemplate repayment by Measure F funding. In other words, if the Board agrees, temporary funds will not again be used for potential Measure F projects before the Master Implementation Plan is completed.

IV. Development of the Master Implementation Plan

The District has begun the process of developing a Master Implementation Plan covering all bond projects at all schools. A Master Plan of projects to be funded is imperative in light of the enormous sum of money at stake, the large number of school site, the 12-year spending horizon, and concern over staff statements that \$429 million may not be sufficient to cover all assessed needs in the Measure F ballot language. Meaningful oversight must begin with the development of this solid, comprehensive, and publicly vetted spending plan. The Plan will help provide needed continuity and transparency to ensure a vigorous and independent oversight process.

Members of the public may review and comment on the Master Implementation Plan before its adoption. Progress on the development of the Plan will be reviewed from time to time during Committee meetings

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and the public will have an opportunity to comment at those times. In addition, the public may have input through the principals of their local schools or through their School Board representative. The public may also express their concerns and ideas during the "Oral Petitions" portion of the School Board meetings.

An example of the need for the development of a publicly vetted Master Implementation Plan is the ongoing scrutiny and discussions associated with the concept of using Measure F funds on "specialized instructional programs." The ballot measure's school by school project list included the phrase "Repair, upgrade or construction of facilities for specialized instructional programs" for the middle and high schools and a category called "district facilities." The Glossary contained in the measure further defines the phrase as "the repair, upgrade, construction or modernization of equipment or facilities in support of programs at a specific campus."

In July 2002, District staff informed the Committee that Year 2002-03 expenditures could include approximately \$20 million for facilities for unspecified "specialized instructional programs" at the middle and high schools. Some Committee members expressed their discomfort with the idea of expenditures based on language so vague that it possibly could not be considered a "specific facilities project" as required by Proposition 39. When some residents discovered that the District might use the "specialized instructional programs" phrase to fund a major performing arts center at Lincoln High School, they filed their protest with the Committee.

Decisions regarding using Measure F funding for construction of unspecified "specialized instructional programs" have been deferred until 2003 as part of the Master Plan process. However, some Committee members have stated their opposition to the use of this phrase to enable Measure F funding for major and significant projects not specifically identified in the ballot measure. Spending Measure F funds on construction of major facilities projects not specifically identified in the ballot measure could violate Proposition 39 and the Strict Accountability Act.

V. Other Committee Activities

Other Oversight Committee projects this year have included:

- Creation of a webpage (http://www.sjUSD.k12.ca.us/bond_project/CBOC.html) relating to the Committee's activities available from the District's web site.
- Creation of ad-hoc subcommittees:
 - Code of Conduct Subcommittee – Formed to produce a Code of Conduct, By-laws, and Meeting Guidelines to be adopted by the Committee. This subcommittee completed its work and has been disbanded.
 - Bid Process Review Subcommittee – Formed to review the bid process that the District will use for Measure F Fund expenditures.
 - Report Drafting Subcommittee – Formed to produce a working draft of this report.
 - Website Subcommittee – Formed to design and format the Committee web pages. This committee has completed its work and has been disbanded.
 - Deferred Maintenance Subcommittee – Formed to review the procedure for deferred maintenance budget spending. Cost of deferred maintenance is a separate category of school expenditures that can be confused with Measure F expenditures. The Committee has formed this ad hoc subcommittee to work with the District on this matter.
 - Auditor Selection Subcommittee – Formed to work with the District to select the auditor(s) to perform the required annual financial and performance audits.

If you have any concerns about expenditure of Measure F funds, please do not hesitate to contact this Committee. Our contact information can be found at:

http://www.sjUSD.k12.ca.us/bond_project/Measure_F/memberlistpage.htm

Also, all members of the public are invited to attend our meetings. The schedule is at:

http://www.sjUSD.k12.ca.us/bond_project/CBOC.html .