

Performance Audits of Proposition 39 Bonds

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History

- Proposition 39 passed in November 2000
- Changed required voter approval to 55%
- Proceeds used only for the purposes listed
- A list of the specific school facilities projects to be funded
- An annual independent performance audit
- An annual independent financial audit

History

- Proposition No. 39 amended the California Constitution and the Education Code
- Sections 15264 to 15288 added to the Education Code.
- Section 15278 provides little guidance to Districts:
 - COC is to receive and review the annual performance audit

History

Sources of Obligation to provide:

- Prop 39, Part 1: Article 13A, California Constitution includes:
 - “A requirement that the ...Community College Board ...conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.”

History

- Prop 39, Part 2: AB 1908, Ed Code Section 15278(c) (1) (Among the duties of citizens oversight committee) :
 - “Receiving and reviewing copies of the annual, independent performance audit required by [Prop 39].”
- What does “Annual” mean?
 - No specific year – should simply be regular.

Recent Events

- Flash forward to 2008
- State Controller and San Joaquin Delta College (2008)
 - Prompted by a citizen's complaint , a subsequent grand jury report and a state senator's request.
 - Took five months and included a four-year summary of financial and performance audit data.
 - Applied government auditing standards

Recent Events

- Conclusions of SJDCCD State Audit:
 1. Substantial amounts were expended on projects not included in the approved project list.
 2. Proceeds were expended on operational, including travel, expenses not qualified as capital in nature.
 3. Audits performed did not “result in meaningful enhancement of accountability and transparency” of Prop 39 Bond proceeds.
 4. There remained a risk that a taxpayer could sue under AB 1908. None has.

Recent Events

- Now forward to 2009
- Complaint filed with State Board of Accountancy by a COC advocacy group that alleged:
 - Performance audit **MUST** measure economies of scale and efficiencies
 - Agreed upon procedures wording in audit report was not appropriate
 - Led to SB 1473, Wyland

Recent Events

- In December 2009 the Chancellor's Office, accounting firms and community college representatives joined forces to:
 - Oppose the requirement of annual effectiveness and efficiency audits
 - Would be very costly
 - Districts can always choose this option if desired
 - Develop alternative language for SB 1473

Now,

- SB 1473, Wyland was signed into law:
 - Adds Section 15286 into Education Code
 - Requires financial and performance audits be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the U.S. (The Yellow Book)
 - Effective for reports issued after January 1, 2011

The Yellow Book

- General Government Audit Standards include:
 - Independence
 - Professional judgment / Skepticism
 - Competence
 - Continuing Education
 - Quality control and peer review

The Yellow Book

- Provides for Ethical Principles of Audits including:
 - The public interest
 - Integrity
 - Objectivity
 - Proper use of government information, resources, and position
 - Professional behavior

What is a Performance Audit?

- Performed annually in which there are bond proceeds available to be spent
- The purpose of a performance audit is to:
 - Provide management with an independent and objective evaluation of government operations
 - Assist management to meet the increased public demand for information disclosure
 - Evaluate evidence against stated criteria
 - Consider applicable standards

What is a Performance Audit?

- Objectives can vary widely
 - Option 1: Economy and efficiency
 - Option 2: Compliance with laws, regulations, contracts, etc.
 - Option 3: Internal Controls
 - Option 4: Prospective analyses
- Most districts will typically choose between Options 1 and 2
- Objectives are NOT mutually exclusive

What is a Performance Audit?

- Economy and Efficiency vs. Compliance
 - Economy and Efficiency audits focus on:
 - Costs and resources used to achieve program results.
 - Timeliness and quality
 - Appropriate value based on cost
 - Sound procurement practices
 - Extent to which program is achieving its goals and objectives

What is a Performance Audit?

- Economy and Efficiency vs. Compliance
 - Compliance audits determine whether laws, regulations, etc. are met related to:
 - Purpose of the program
 - Manner in which it's conducted
 - Outcomes
 - Costs incurred and revenues received

What do I do with the Audit Report?

- Take it to your COC meeting for their review and receipt
- Take it to your Board of Trustees for their review and receipt
- Post it on the district's website, along with other COC materials (15280(b)).
- Submit the pertinent parts to NRMSIR (EMMA) as part of your Continuing Disclosure documents

“Is My Audit In Compliance?”

- Ultimately, both an Economy and Efficiency and a Compliance type of audits are Performance Audits under Governmental Accounting Standards
- Districts have the option to determine the scope and type
- Most bond counsel agree that the audits may be paid from bond proceeds

“Is My Audit In Compliance?”

- Audit reports should contain:
 - Objectives, scope, and methodology of the audit
 - Audit results, including findings, conclusions, and recommendations, as appropriate
 - Statement about the auditors' compliance with GAGAS
 - Summary of the views of responsible officials

“Is My Audit In Compliance?”

- Audit reports should include :
 - The scope of their work on internal control
 - Any deficiencies in internal control that are significant within the context of the audit objectives and based upon the audit work performed.

“Is My Audit In Compliance?”

- What happens if the audit determines that proceeds were spent on an unauthorized project?
 - Section 15284(a) permits the filing of a taxpayer lawsuit to enjoin further expenditures.
 - Section 15288 states the intention of the Legislature to pursue criminal prosecution in the event of “waste or misuse” of bond proceeds

Questions and items to consider:

- With the issuance of Build America Bonds (BABS), do the duties of the performance auditor change?
- Will an effective performance audit create an audit trail sufficient for the IRS?
- When and under what circumstances should the performance audit firm interface with bond counsel on Prop 39 questions?
- What is the appropriate interface between the performance auditor and the Citizens' Oversight Committee?