

LOS ANGELES UNIFIED SCHOOL DISTRICT

SCHOOL CONSTRUCTION BOND CITIZENS' OVERSIGHT COMMITTEE

David Crippens, Chair

L.A. Area Chamber of Commerce

Elizabeth Bar-Ei, Vice Chair

LAUSD Student Parent

John Naimo, Secretary

L.A. County Auditor-Controller's
Office (Alternate Member)

Christopher Espinosa

L.A. Mayor's Office

Charles Bergson

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Associated General Contractors of
California

Lynda Levitan

Thirty-First District PTSA

Virginia Tanzmann

American Institute of Architects

Betty Valles

AARP

Wendy Watanabe

L.A. County Auditor-Controller's
Office (Primary Member)

(Vacant)

BREATHE California

(Vacant)

California Taxpayers' Association

(Vacant)

Environmental Justice/Civil
Rights Group

(Vacant)

L.A. City Controller's Office

(Vacant)

L.A. Co. Federation of Labor,
AFL-CIO

(Vacant)

Tenth District PTSA

Joseph P. Buchman – Legal Counsel

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Oversight Committee Consultant

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Director

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To: School Construction Bond Citizens' Oversight Committee Members

Subj: BOC Membership and Succession Planning

From: David Crippens, BOC Chair

Date: March 18, 2009

EXECUTIVE SUMMARY

In order to implement a review of the BOC Membership, I will, together with Board of Education (BOE) President Mónica García, appoint a joint task force to make recommendations to the BOE and BOC.

The mission statement of the School Construction Bond Citizens' Oversight Committee is:

The mission of the strong and independent Oversight Committee is to oversee the expenditure of money for the construction, repair, and modernization of schools by the Los Angeles Unified School District (LAUSD). The Oversight Committee communicates its finding to the Board and the public in order to ensure that school bond funds are invested as the voters intended and that projects are completed wisely and efficiently.

In order to continue to fulfill this mission statement, the School Construction Bond Citizens' Oversight Committee should, at this time:

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- Undergo, in coordination with the District, an examination of its membership to determine if:
 - The nominating authority for any current BOC Member should be changed
 - Any of the current entities represented on the BOC should be eliminated
 - Any representatives of any additional entities should be added to the BOC
 - The desirable number of BOC members

- Determine how to better prepare for succession of BOC Members and Officers

BOC MEMBERSHIP

Background

The BOC came into being after the passage of Proposition BB in the Spring of 1997. As there was no controlling State statute at that time, the BB Oversight Committee (BBOC) was created by action of the District Board of Education (BOE), fulfilling a commitment made to the electorate in the Ballot Pamphlet for that Proposition. The BBOC had eleven members.

Following the passage of Measure K in November 2002, a “Proposition 39” bond issue that allowed for a reduced 55% majority, new statutory requirements for the BOC came into effect. To implement the new School Construction Bond Citizens’ Oversight Committee (BOC), the District and the BOC negotiated the Memorandum of Agreement which now serves as the BOC Charter. The BOC Membership was structured at that time, primarily as a merging of the statutory membership requirements that went into effect as a result of the passage of Proposition 39 and the membership of the pre-existing BBOC.

The membership of the BOC currently is, therefore, a product of two controlling documents:

- Education Code §15282(a) (Attachment A)
- The *LAUSD School Construction Bond Citizens’ Oversight Committee Charter And Memorandum Of Understanding* (MOU), February 27, 2007 (applicable excerpts in Attachment B)

The former establishes the requirement for a bond oversight committee for any school district or community college district that passes a Proposition 39 bond issue with the reduced 55% majority requirement. There shall be a minimum of seven members on such BOC’s, and there are stipulations of the qualifications for five of the members.

The latter is, effectively, a binding contract between the BOE and the BOC. The 2007 MOU is the current version, an update of the 2002 original MOU. While fully compliant with the requirements of EC §15282(a), it goes further to establish a total of fifteen Members of the BOC and names the nominating entities for each. In some cases, the specific nominating entity is identified in the MOU; in others, it describes the type of organization that will be the nominating entity, but does not identify the entity itself.

The MOU also provides for the methodology to change the BOC Membership. Note that, under the terms of MOU §3.5, the BOC has the lead responsibility for recommending changes in the BOC Membership to the BOE and, under the terms of MOU §6.7, there is a requirement for a joint review of the MOU by the District and the BOC to determine if any amendments to the MOU should be made. This review is required to be done

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within 5 years from the adoption of the present MOU, which was adopted on February 27, 2007, leaving three years remain within which to meet this deadline.

Of the fifteen BOC members, only two – the two “parent” members that are stipulated by EC §15282(a) – are directly selected by BOE. The other thirteen, including the three remaining statutorily-stipulated members, are nominated by specified entities. The nominees are presented to the District and, following vetting by the District Ethics Office, are appointed by the BOE.

The full list of BOC Members and their nominating authorities may be found in Attachment A.

Current Situation

The passage of time and various events have made it advisable to review the makeup of the BOC Membership at this time; these events include:

- Two of the original BOC nominating entities are no longer interested in, or are no longer performing, this function:
 - The Planning and Conservation League, the “bona fide nonprofit environmental, environmental justice or civil rights group”
 - The California Taxpayer Association, the “bona fide taxpayer organization”
- There has been a change in the organization of the nominating entities. The American Lung Association of Los Angeles County changed to Breathe California of Los Angeles County. The MOU should be amended to reflect this change.
- The local chapter of the Sierra Club has expressed interest in becoming the “environmental” nominating authority.
- The LAUSD Charter School Community has expressed interest in being represented on the BOC; at the direction of the BOC, staff has been exploring how this might work.
- Representatives of the early education community have expressed interested being represented on the BOC.
- The Central City Association has expressed interest in being represented on the BOC.

While we have the above four entities that have expressed interest in being represented on the BOC, it would probably not be proper to conclude that these are the only entities that may have such interests. Therefore, it would appear to be wise to conduct outreach to as many different components of the LAUSD community as possible, using as many means of communications as reasonably possible, to solicit interest in this topic before beginning to analyze and make recommendations regarding the optimal mixture of BOC nominating communities.

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Change of Nominating Authority for Current BOC Members

There is a statutory requirement for a taxpayer organization representative on the BOC, but the California Taxpayers Association (CTA), the current nominating entity, has not nominated a representative for some time. Letters were sent to CTA September 24, 2007 and November 17, 2008 informing them of the vacancy on the BOC. It would appear there are no options to replacing CTA with another taxpayer organization.

Assuming that Breathe California will remain as a nominating entity, the MOU should be so amended.

The Planning and Conservation League (PCL) has not nominated a representative for some time. A letter was sent to the PCL October 18, 2005 informing them of the vacancy on the BOC. If an environmental/environmental justice/civil rights group will remain as a nominating entity, then finding a replacement entity would appear to be a requirement. The Sierra Club, which has asked to be the nominating entity for this position, appears to meet the criteria. There may be other environmental/environmental justice/civil rights groups that are also interested in this position.

Addition of Entities to Be Represented on the BOC

The three other communities or entities that have expressed interest in representation on the BOC – the Central City Association, the Charter School community, and the Early Education community – would not appear to meet the criteria for any of the existing BOC nominating entities, even if there was a BOC Member seat without a nominating entity. Therefore, for any of these entities to become BOC Member nominating entities, either an existing position would have to be eliminated or a new seated add to the existing fifteen.

It is somewhat likely that, if it was known that a BOC Member review was taking place, there would likely be additional candidates coming forward. For example, if the Early Education community is to be considered, the Adult/Career Education community may also wish to be considered. There are three BOC Members appointed by an elected officer (City of Los Angeles Mayor and City of Los Angeles Controller) or body (County of Los Angeles); there could be interest in gaining BOC representation from the 31 other municipalities within the LAUSD limits, individually or collectively. There is currently a representative from the American Institute of Architects on the BOC; there could be interest from the American Planning Association, the American Society of Civil Engineers, the Construction Management Association, or any of several other professional associations that work in the areas of planning, design, and construction of school facilities – or, for that matter, professional and/or trade societies in other areas comprehended by bond-funded projects, such as information technology. Even though EC §15282 specifically prohibits District employees from service on the BOC, the various District employee communities could indicate an interest in the appointment of a non-employee representing their communities.

The above is offered merely to show the very wide variety of entities that could conceivably express interest in becoming a nominating entity for the BOC.

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Elimination of Entities Currently Represented on the BOC

As the environmental/environmental justice/civil rights position has been unfilled for some time, BOC Members and staff have explored the possibility of other organizations taking over the nominating entity position, without success. However, recently, the Sierra Club has stepped forward in this regard.

There may be some entities now represented on the BOC who no longer wish to fulfill this responsibility. With the exception of the statutorily specified positions, it could be possible to eliminate the category, not just shift the nominating responsibility to another entity within the category.

Desirable Number of BOC Members

In considering the desirability of changes to the make-up of the BOC, the total number of Members should be a consideration.

At fifteen, the current BOC is over twice the seven members that is the minimum number for a BOC in statute. Of course, the LAUSD Bond program is by far the largest in the State – and, for that matter, in the history of the nation.

However, at some point, a committee reaches a size where the number of members alone is a limit on getting action taken. To offer an example of a practical issue, there is a limit on the number of seats on the stage of the LAUSD Board Room.

There is no one “right” number of BOC Members. However, while there may be interest by some in satisfying the desires of every entity that asks to have representation on the BOC, we suggest that, if an increase in the size of the BOC is considered, that the benefits of adding another entity be balanced against not making the BOC more difficult to manage.

RECOMMENDED ACTION PLAN

- I. Establishment of the Joint BOE/BOC Task Force on BOC Membership.
- II. BOC Staff prepare draft action plan for Task Force Members and other parties-at-interest, including other BOE and BOC Members
- III. Draft action plan to be considered, revised as desired, and adopted by the Task Force.
- IV. Outreach to parties-at-interest:
 - a. Topics:
 - i. Presentation of Action Plan
 - ii. Request for recommendations for BOC organization and representation
 - iii. Call for expressions of interest in BOC representation
 - b. Entities to contact:
 - i. Board Members
 - ii. BOC Members

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- iii. LAUSD Management
 - iv. Existing BOC appointing entities – ask if they are interested in continuing to act in that capacity
 - v. Entities and communities that have previously expressed an interest in being represented on the BOC
 - vi. Call for expressions of interest from other parties
- c. Communications media:
- i. Notice on BOC web site
 - ii. Notice on LAUSD web site
 - iii. Announcements at BOC and LAUSD meetings
 - iv. Letters to parties currently represented on BOC
 - v. Letters to parties that have previously expressed interest in BOC representation
 - vi. Letters to parties suggested by BOE and BOC members and others as Task Force may direct
- V. BOC staff, functioning as staff to the Task Force, to communicate with interested parties to inform them of BOC Member responsibilities and requirements and to assist in their preparation of letters of interest.
- VI. Parties interested in nominating BOC Members prepare letter of interest, including:
- a. Identification of entity
 - b. Contact information
 - c. Mission and history of entity, with emphasis on K-12 and other educational services provided by LAUSD
 - d. Identification of the community(ies) that the entity would represent, and that the entity would be informing of bond-funded project developments
 - e. Expression of the benefits of this entity becoming a BOC Member nominating authority
 - f. Signature of responsible entity officer that the entity wishes to be a BOC Member nominating entity and that the requirements for such are understood and will be followed if the entity is so selected.
- VII. BOC staff receive and summarize responses for Task Force.
- VIII. Public meeting where the entities that expressed interest in becoming nominating authority are given the opportunity to present their qualifications to the Task Force.
- IX. Task Force to consider alternatives and prepare report recommending the nominating entities for the BOC, with assistance of BOC staff.
- X. BOC and LAUSD Legal to prepare MOU Amendments for implementation of recommendations.
- XI. Present report and recommendations and MOU Amendments to BOC for adoption.
- XII. Present report and recommendations and MOU Amendments to BOE for adoption.
- XIII. Execute MOU Amendments.
- XIV. Contact new nominating entities and request nominations

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BOC SUCCESSION PLANNING

The succession planning for BOC leadership is extremely important in providing for the continuing viability of the bond oversight process. In order to improve the succession process, I recommend:

- The BOC advocate for the repeal of the BOC four-year term limit provision in State statute
- The BOC move to place new Members interested in a future BOC leadership position on the Executive Committee early in their tenure
- BOC Chairs solicit expressions of interest from BOC Members, particularly newly appointed BOC members, in serving as Chairs or Members of Task Forces
- Maintain and expand the new Member Briefings and BOC binders
- Encourage BOC Members to direct questions to BOC staff

BOC Term Limits

In recent years, perhaps the single greatest obstacle is the four-year term-limit – two consecutive two-year terms – from Education Code §15282. As the BOC members will surely appreciate from their own experiences, it can take a great deal of time, effort, and research to become conversant with the various statutory, regulatory, contractual, and procedural elements of the LAUSD way of doing business. The \$28+ billion school bond program, the largest in U.S. history, is hugely difficult to get one's arms around.

Because of the staggering of terms of individual members and BOC elections, it is not possible to have the type of programmed progression through the BOC leadership positions that many professional and civic societies utilize; for example, if we attempted to an Executive Committee/Secretary/Vice Chair/Chair progression, unless a new Member was elected to the Executive Committee post at his/her first meeting, (s)he would not be able to serve a full term as Chair.

The BOC has twice requested – and the State Board of Education has twice approved – extension of the terms in office of BOC members. Moreover, this is a very frequent occurrence before the State BOE, indicating that many BOC's have experienced similar problems in maintaining continuity of BOC membership and leadership due to this term limit provision.

For these reasons, I recommend that the BOC take a position advocating to the State Legislature that the BOC term limits provision be eliminated. In order to move towards accomplishment of this goal, the first step should be to encourage the District BOE to adopt this position on proposed legislation, contact other K-12 and community college BOC's and encourage them to join us, and to present this to various other parties at interest, such as PTSA. We then need to find a sponsor to carry the legislation and to present our rationale to the Legislature.

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Early Election to Executive Committee

Members of the BOC Executive Committee receive more information regarding matters of interest than the general membership. As such, if those Members who have an interest in future leadership positions within the BOC become Members of the Executive Committee early in their tenures, such as the election cycle immediately following their appointment, they will have greater knowledge of the various issues and be better prepared for such leadership positions later in their terms.

As each election cycle stands on its own, this is not something that can be formalized in practice; it is a policy that we can ask the Members to keep in mind each June, or otherwise, when the BOC leadership position elections are held.

Task Force Chair and Membership

Serving as the Chair, or as a Member, of a Task Force is another excellent means of BOC Members learning more of the details of the operation of the bond-funded programs, as well as working with BOC and FSD staffs on specific topics of importance. I intend to specifically approach all BOC Members, particularly newly-appointed Members, to ask as to their willingness to take on such responsibility and to attempt to utilize such appointments to better prepare Members for later senior leadership roles.

New Member Briefings and BOC Member Binders

For many years, BOC staff has conducted briefings for new BOC Members and maintained and distributed three-ring binders with information about the BOC and its work. These practices should be maintained and expanded.

Questions for BOC Staff

The BOC staff exists to serve the Members and to assist the Members in fulfilling our responsibilities to oversee the bond-funded programs. Many Members direct questions on topics of interest to them to the BOC staff. I want to encourage all Members to direct questions to BOC staff, with one qualification: For questions that would, in the judgment of staff, require a significant amount of research, ask the Chair for authorization prior to proceeding.

**ATTACHMENT A
EDUCATION CODE 15282**

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California Education Code 15282:

- (a) The citizens' oversight committee shall consist of at least seven members to serve for a term of two years without compensation and for no more than two consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:
 - (1) One member shall be active in a business organization representing the business community located within the district.
 - (2) One member shall be active in a senior citizens' organization.
 - (3) One member shall be active in a bona fide taxpayers' organization.
 - (4) For a school district, one member shall be the parent or guardian of a child enrolled in the district. For a community college district, one member shall be a student who is both currently enrolled in the district and active in a community college group, such as student government. The community college student member may, at the discretion of the board, serve up to six months after his or her graduation.
 - (5) For a school district, one member shall be both a parent or guardian of a child enrolled in the district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

- (b) No employee or official of the district shall be appointed to the citizens' oversight committee. No vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code.

**ATTACHMENT B
MEMORANDUM OF UNDERSTANDING EXCERPTS:
BOC MEMBERSHIP**

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The following are excerpts from the current *LAUSD School Construction Bond Citizens' Oversight Committee Charter And Memorandum Of Understanding*, February 27, 2007¹.

3. Committee Membership

- 3.1. The membership of the Committee shall be as follows. The five members whose qualifications are dictated by Education Code §15282(a) are noted with a pound sign (#).
 - 3.1.1. The Board shall appoint one member nominated by the Los Angeles Area Chamber of Commerce who is active in the Chamber of Commerce (#).
 - 3.1.2. The Board shall appoint one member who is active in a senior citizens' organization (#).
 - 3.1.3. The Board shall appoint one member who is active in a bona fide taxpayers' organization (#).
 - 3.1.4. The Board shall appoint one member who is the parent or guardian of a child enrolled in the LAUSD (#).
 - 3.1.5. The Board shall appoint one member who is the parent or guardian of a child enrolled in the LAUSD and is active in a parent-teacher organization such as the PTSA (#).
 - 3.1.6. The Board shall appoint one member nominated by the Tenth District PTSA.
 - 3.1.7. The Board shall appoint one member nominated by the Thirty-First District PTSA.
 - 3.1.8. The Board shall appoint one member nominated by the American Institute of Architects, Los Angeles Chapter.
 - 3.1.9. The Board shall appoint one member nominated by the Associated General Contractors of California, Los Angeles District.
 - 3.1.10. The Board shall appoint one member nominated by the Mayor of the City of Los Angeles.
 - 3.1.11. The Board shall appoint one member nominated by the Controller of the City of Los Angeles.
 - 3.1.12. The Board shall appoint one member nominated by the Los Angeles County Board of Supervisors from the Office of the County Auditor-Controller.
 - 3.1.13. The Board shall appoint one member nominated by the Los Angeles County Federation of Labor AFL-CIO.
 - 3.1.14. The Board shall appoint one member nominated by a bona fide nonprofit environmental, environmental justice or civil rights group.
 - 3.1.15. The Board shall appoint one member nominated by the American Lung Association².
- 3.5. If a current member is inactive or if one of the nominating individuals or organizations noted above elects not to nominate a member, the Committee may request the Board to appoint a replacement or recommend specific changes in the number of members and/or composition of the Committee to the Board, consistent with state law.

¹ <http://www.laschools.org/bond/meeting-archives/download/charter-and-mou.pdf>.

² This organization has changed its name and is now known as "Breathe California;" the name change in the MOU will be accomplished along with any other amendments to the MOU that may result from this study (assuming Breathe California remains as a BOC Member nominating entity).

6. Commitment to the Committee

- 6.7. The District and the Committee agree that to insure oversight by the Committee continues to be as effective as possible, the efficacy of this Charter and Memorandum of Understanding will be evaluated on a periodic basis and a formal review LAUSD School Construction Bond Citizens' Oversight Committee will be jointly conducted by the District and the Committee within five (5) years of the adoption of this Charter and Memorandum of Understanding to determine if any amendments to this Charter and Memorandum of Understanding should be made.

8. Logistical Support from the District

- 8.1.2. In order to insure the independence and effectiveness of the Committee, the District shall commission an unbiased, competent and independent annual review of the Committee's processes, including its utilization of staff, consultants and counsel.