

SCHOOL DISTRICT DILEMMA BONDS OR BONDAGE?

SUMMARY

The 2012-2013 San Diego County Grand Jury (Grand Jury) reviewed practices of San Diego County school districts utilizing school bonds to fund school construction, renovation, maintenance, technological modernization, and other educational needs and requirements. The Grand Jury found that some school districts are borrowing large sums of money at high interest rates and pushing debt obligations far into the future. Often voters are not provided useful information regarding financial costs and payback terms essential to making informed decisions when asked to pass a school bond measure.

Debt issuance can be part of a larger and more responsible fiscal plan. The use of Capital Appreciation Bonds (CABs) to finance school construction projects can pose serious future risks to school districts. Some San Diego County school and community college districts have engaged in new financing practices utilizing CABs that may place the issuing district at risk of federal, state, and public scrutiny. The Grand Jury found that specific policies associated with common types of CABs significantly increased the cost and generational financial burden to local taxpayers.

The Grand Jury recommends that there is a need for countywide school district bond reform that includes greater citizen oversight of bond requirements and increased transparency of total bond costs and future outlays.

INTRODUCTION

The Grand Jury received numerous citizen complaints alleging impropriety about the Poway Unified School District's use of CABs to fund a variety of school construction projects between the years 1999-2011. CABs have become a highly controversial issue as a variety of news stories outlined the cost of the 2008 Poway Unified School District's Proposition C, a \$179 million bond measure. Due to the passage of Proposition C, \$74 million in bonds were sold in 2009 and an additional \$105 million in 2010. Both of these bond sales generated premiums (additional proceeds available) of \$9.5 million and \$21 million, respectfully. The eventual cost to the taxpayer to repay just the \$105 million bond is almost \$1 billion over a period of 40 years, a payoff ratio of over 9 to 1. Other school and college districts in the County have bonds with even higher payoff ratios.

PROCEDURE

The Grand Jury conducted interviews with complainants, officials from the San Diego County Office of Education, the Poway Unified School District, and the County Treasurer/Tax Collector's office regarding school bond procedures from initiation, proposition drafting, public voting, to obtaining the loan. The Grand Jury reviewed official documents from the State of California Attorney General, obtained published information from newspapers and public web sites. We also reviewed proposed legislation, Assembly Bill 182.

DISCUSSION

Many school districts are confronted with significant loss of revenue while simultaneously facing critical needs to build or modernize facilities. They find themselves asking voters to approve bond measures that will provide needed funds for these projects, in addition to funding day-to-day operating costs.

A school bond is a debenture issued by a school district to fund school construction, renovation, or repair. Citizens who reside within school districts vote on bond propositions that, if passed, generate revenue normally through increased property taxes. School districts then use the voter-approved bonds to fund these projects. Although some citizens are averse to increases in property taxes, they are generally in favor of raising revenue for schools.

In many cases, school districts issue general obligation bonds which are municipal debt instruments issued by state and local governments to raise funds for public works. They are backed by the credit and taxing authority of the issuing organization or municipality. General obligation bonds are issued with the belief that a municipality will be able to repay its debt obligation through taxation. No assets are used as collateral.¹ Current Interest Bonds (CIBs) are bonds in which principal and interest payments are made to the bondholders on a periodic basis, similar to a home mortgage. School districts bank on future revenue, either state education grants or increased property tax through bond propositions to repay CIBs.²

Some districts have turned to CABs that are municipal bonds that do not pay principal and interest annually, similar to a U.S. Savings Bond. Rather, these bonds compound interest until the principal is due, at which time payments are made reflecting principal, compound interest, and any premium generated at issuance.³ In Poway's case, the school district will not even start paying off the loan for 20 years and it won't be paid off until 2051, 40 years from the issuance of the CAB.⁴ Typically, CABs are sold at a deeply discounted price with maturity values in multiples of \$5,000.⁵

Hundreds of California school and community college districts have financed construction projects with CABs that push repayment far into the future and ultimately cost many times what the district borrowed.⁶ CABs, in some cases, have forced taxpayers to pay more than ten times the principal and interest to retire the bonds. Some school districts, suffering from state budget cuts and declining property tax revenue, are using construction bonds to cover day-to-day operations. Government finance experts consider bonds imprudent if the total cost is more than four times the money borrowed, the maturity period is greater than 25 years, interest rates are higher than 8%, and there is no pre-

¹ <http://www.investopedia.com/terms/g/generalobligationbond.asp#ixzz2M2BUx72Z>

² http://www.msrb.org/msrb1/glossary/view_def.asp?param=CURRENTINTERESTPAYINGBOND

³ "Capital Appreciation Bonds – Are They Risky Investments," Shawn P. O'Leary, Nuveen Asset Management, August 10, 2012.

⁴ Voice of San Diego, 9 Key Questions and Answers on Poway's Big Borrowing, Sept 27, 2012.

⁵ http://www.msrb.org/msrb1/glossary/view_def.asp?param=CAPITALAPPRECIATIONBONDS

⁶ <http://www.latimes.com/news/local/la-me-school-bond-20121129,0,4984327,print.story>

payment clause.^{7 8} Currently, the California Government Code allows districts to issue bonds for a maximum of 12% interest rate and maturity of up to 40 years while the California Education Code allows up to a maximum of 8% interest rate and a maturity of up to 25 years.

The Los Angeles Times reviewed school district CABs. They reported that among those school districts reviewed, San Diego County ranked 15th statewide out of 47 counties for its average repayment ratio of \$5.08 in interest and principal for every \$1 borrowed (\$5.08:1), well above the statewide average of about \$2 for every \$1 borrowed (\$2:1). Several San Diego County school districts with higher repayment ratios than Poway's (\$4.26:1), include Santee School District, ranked fourth (\$16.57:1); San Ysidro School District, ranked eighth (\$14.68:1); and Southwestern Community College District, ranked 28th (\$11.19:1) statewide.⁹

Another questionable tactic utilized by school districts is to raise additional funds through bond sales at a premium in exchange for additional upfront cash. This additional cash is then used to pay the costs of bond issuance and interim financing. On March 1, 2011, the California Attorney General opined on *Poway Unified School District v. All Persons Interested et al* "that this proposed use of premium for costs of issuances described in the complaint is not authorized by law. The law is clear that any premium, even if legitimate, must be deposited into a special fund, applied to debt service, and therefore cannot be diverted to pay costs of issuance. See Gov. Code, 29303; Ed. Code 15146(f). The practice of artificially inflating the interest rate to generate premium for unauthorized uses translates into additional bond proceeds over and above what the voters authorized. By diverting premium to unauthorized uses and by artificially inflating interest rates to generate premium, the (Poway) School District is not acting consistent with statutory law, and is incurring debt beyond what the voters authorized in violation of the California Constitution."¹⁰

A day later, on March 2, 2011 *Poway Unified School District v. All Persons Interested et al* was a validation action filed by Poway to confirm the legality of the adoption of District Resolution No. 21-2011 (Proposition C).¹¹ Validation actions are common legal proceedings public entities rely upon to seek judicial review of actions taken. If no one opposes a validation action, a court can enter a default judgment in favor of the moving party. No one opposed the validation action filed by Poway and the Superior Court entered a default judgment on March 2, 2011.¹² Since the Attorney General did not

⁷U-T San Diego, March 13, 2013, "Reforming Risky Bonds."

⁸ Treasurer-Tax Collector County of San Diego letter dated February 7, 2013.

⁹ <http://www.utsandiego.com/news/2012/nov/30/tp-poway-not-alone-on-bonds-with-hefty-repayments/>

¹⁰ California Attorney General's letter dated March 1, 2011, RE: *Poway Unified School District v. All Persons Interested, et al*, Superior Court of California, County of San Diego, Case No. 37-2010-00106255-CU-MC-CTL

¹¹ http://www.powayusd.com/news/PDF_Files/2012-13/10-11-10PUSDResolution21-2011.pdf

¹² Judgment, *Poway Unified School District v. All Persons Interested, et al*, Superior Court of California, County of San Diego, Case No. 37-2010-00106255-CU-MC-CTL, March 2, 2010.

participate in the validation action, it is unlikely the Attorney General's March 1, 2011, letter was submitted as evidence in the case.

Citizens in many San Diego County communities have complained they were not adequately informed about specific terms of the proposed school bond propositions, especially the use of CABs, before voting for them. For example, some CABs allow school districts to defer principal and interest payments for up to 20 years to avoid present-day increases in property taxes. Poway Unified School District's 2008 Proposition C does not mention CABs in the narrative.¹³ One East County community complained that the terms of a bond measure were posted behind a fence that was inaccessible to the public. If accurate or true, these actions might violate state law requirements regarding notice of public meetings.

In September 2012, the San Diego Unified School District passed a resolution banning CABs. The La Mesa-Spring Valley School District adopted policy changes calling for greater scrutiny and openness about school bond propositions. However, both school districts have left open the possibility of using CABs in the future.¹⁴ Tom Torlakson, California State Superintendent of Public Instruction and Bill Lockyer, State Treasurer issued a joint statement that school bond reform legislation "is needed to prevent abuses and ensure that both school board members and the public obtain timely, accurate, complete, and clear information about the cost of CABs, and alternatives, before CABs are issued." They further recommended that, "all school districts should impose a moratorium on issuing CABs until the Governor and Legislature decide on school bond reforms."¹⁵

It is readily apparent that voters need and deserve clear, concise school bond information from the school district in order to make informed decisions concerning what projects need to be funded and whether or not the school district is making sound fiduciary decisions. At a minimum, the following critical information should be standard bond information:

- Whether a CIB or a CAB will be sought
- The exact upper limit of the amount to be borrowed
- The maximum interest rate
- The repayment schedule
- Maximum property tax that may be levied to pay for the bond.

In that regard, the San Diego County Treasurer-Tax Collector, as the Paying Agent, Transfer and Bond Registrar, and the Investment Manager of Bond Proceeds to the County Office of Education and all 42 local school districts have actively consulted with taxpayers, state legislators, and school board members to formulate a legislative proposal to seek statewide CAB reform.

¹³ Poway Unified School District School Facilities Improvement District No.2007-1, Proposition C.

¹⁴ NBC SanDiego.com, *SDUSD Votes to Prohibit Controversial Bonds* by Lauren Steussy and Chris Chan, September 5, 2012.

¹⁵ California Department of Education News Release, January 17, 2013.

The Treasurer-Tax Collector's five key elements in the reform proposal are:

1. Limit the maturity of a bond issued under the Government code from 40 years to 25 years (to align with the California Education Code).
2. Reduce the maximum allowable interest rate from 12% to 8% (to align with the California Education Code).
3. Include a callable feature in all debt issuances.¹⁶
4. Require one of three government entities to sign off on bond documents for school districts (to align with the California Education Code).
 - The County Board of Supervisors
 - The County Superintendent of Schools
 - The Governing Board of a Community College District
5. Establish a prudent debt service coverage ratio not to exceed 4 to 1. If greater than 4 to 1, a waiver will be required by the County Superintendent of Schools.¹⁷

The Grand Jury welcomes the Treasurer-Tax Collector's five key elements in the reform proposal above with the exception that the Governing Board of a Community College District should not be one of three government entities to sign off on bond documents, due to a perceived conflict of interest.

In February 2012, Senator Mark Wyland (R-Escondido) introduced Senate Bill 1205, legislation that would have essentially banned CABs for school and college districts. The bill stated that a school district or community college district could not issue bonds at a discount exceeding 5% or have an effective interest rate exceeding 12% per year. That bill did not advance in the Senate and was subsequently pulled.^{18 19}

In January 2013, Assembly members Joan Buchanan (D-Alamo) and Ben Hueso (D-San Diego) introduced Assembly Bill 182 (AB 182) which limits the use of CABs for school-construction projects. AB 182 requires the ratio of total debt service to principal for each bond series not to exceed 4:1. It would require each CAB maturing more than ten years after its date of issuance to be subject to mandatory redemption before its fixed maturity date, as specified, beginning no later than the tenth anniversary of the date the bond was issued. AB 182 would also require a school district or a community college district governing board to present an analysis containing the overall cost of the CAB, a

¹⁶ http://www.investorwords.com/671/callable_bond.html#ixzz2Of52zSQf "A bond which the issuer has the right to redeem prior to its maturity date, under certain conditions. When issued, the bond will explain when it can be redeemed and what the price will be. In most cases, the price will be slightly above the par value for the bond and will increase the earlier the bond is called."

¹⁷ <http://www.sdtreastax.com/5-point-plan-goals.html>

¹⁸ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1205

¹⁹ "Lawmaker Sought To Stop Controversial Bond Funding" by Ashley McGlone, U-T San Diego, August 23, 2012.

comparison to the overall cost of current interest bonds, and a rationale for why CABs are being recommended.^{20 21 22}

FACTS AND FINDINGS

Fact: The California Government Code allows districts to issue bonds for up to 40 years at up to 12% interest. The Education Code allows districts to issue bonds up to 25 years at up to 8 % interest

Fact: Ballot initiatives for school district bonds only authorize the principal amount that the school district wants to issue. The initiatives do not seek authorization for the cost of interest payments. In bond deals that employ a CAB structure, this amount can be exponentially larger than the original principal.

Fact: Some CABs allow school districts to defer payments for up to 20 years to avoid present-day increases in property taxes.

Fact: School districts face increasing criticism over bonds that push the cost of borrowing money onto future generations of residents.

Fact: San Diego County school districts have issued 44 CABs since 2007. The districts have borrowed \$1 billion. They will be required to repay \$5.08 billion when the bonds mature, or \$5.08 for every \$1 borrowed.

Fact: The practice of artificially inflating the interest rate to generate premium for unauthorized uses allows additional bond proceeds over and above what the voters authorized.

Fact: Three San Diego County school districts issued bond deals that have a steeper debt ratio than Poway Unified School District. Poway is ranked 42nd in the state with a debt ratio of \$9.35 for every \$1 borrowed.

Finding 01: Bond initiatives and propositions typically do not provide information as to the cost of principal and interest payments. This amount can be exponentially larger than the original principal in bond measures that employ a CAB structure.

Finding 02: When school districts divert premiums to unauthorized uses and by artificially inflating interest rates to generate the premium, they are not acting consistent with statutory law and are incurring debt beyond what voters authorized in violation of the California Constitution.

Finding 03: AB 182, if enacted, will require governing boards of school and community college districts to provide greater transparency to voters concerning:

- Whether CABs are proposed and the reasoning for them

²⁰ <http://www.pomeradonews.com/2013/01/25/school-bond-legislation-unveiled/>

²¹ <http://www.co.san-diego.ca.us/ttc/docs/news130125.pdf>

²² http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0151-0200/ab_182_bill_20130124_introduced.pdf

- Cost comparisons between CIBs and CABs
- Total debt service to principal ratios
- Mandatory early redemption guarantees
- Analysis of the overall bond cost
- Underwriter disclosure.

This mandatory reporting will provide greater bond referendum clarity for the taxpayers.

RECOMMENDATIONS

The 2012/2013 San Diego County Grand Jury recommends that when the 42 San Diego County School Districts and the five Community College Districts consider issuing any financial instruments they must:

13-79: Structure future loans to offer more flexibility by allowing a variety of financing options to include:

- **Limit the maturity of a bond to no more than 25 years**
- **Early prepayment of bonds**
- **A callable feature in all debt issuances**
- **No interest rates greater than 8%**
- **A debt ratio not to exceed 4 to 1**
- **Using the Education Code rather than Government Code.**

13-80: Hold public meetings to discuss the financial impact on the school district for all future bond proposals. The discussion should include:

- **The bond amount**
- **Interest rate**
- **Terms**
- **Cost to homeowners in increased property taxes**
- **Total repayment amount**
- **What the new issue may do to future bond requirements.**

13-81: For all future bond proposals send public notices to all district residents to ensure that the community has adequate notice of school board meetings where bond proposals will be discussed. Meeting notices must be posted in several public locations (e.g., school bulletin boards, school websites, school offices, classrooms and district offices), as defined by the Brown Act.

13-82: For all future bond proposals encourage the PTA or similar organizations to educate their membership in school board policies and procedures. Suggested featured speakers could be school board members or financial experts who can answer questions and share relevant bond information.

REQUIREMENT AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the

elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department. Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
Alpine Union School District	13-79 through 13-82	8/20/13
Bonsall Union School District	13-79 through 13-82	8/20/13
Borrego Springs Unified School District	13-79 through 13-82	8/20/13
Cajon Valley Union School District	13-79 through 13-82	8/20/13
Cardiff School District	13-79 through 13-82	8/20/13
Carlsbad Unified School District	13-79 through 13-82	8/20/13
Chula Vista Elementary School Dist	13-79 through 13-82	8/20/13
Coronado Unified School District	13-79 through 13-82	8/20/13
Dehesa School District	13-79 through 13-82	8/20/13
Del Mar Union School District	13-79 through 13-82	8/20/13
Encinitas Union School District	13-79 through 13-82	8/20/13
Escondido Union High School District	13-79 through 13-82	8/20/13
Escondido Union School District	13-79 through 13-82	8/20/13
Fallbrook Union High School District	13-79 through 13-82	8/20/13
Fallbrook Union School District	13-79 through 13-82	8/20/13
Grossmont Union High School District	13-79 through 13-82	8/20/13
Jamul-Dulzura Union School District	13-79 through 13-82	8/20/13
Julian Union High School District	13-79 through 13-82	8/20/13
Julian Union School District	13-79 through 13-82	8/20/13
La Mesa Spring Valley School District	13-79 through 13-82	8/20/13
Lakeside Union School District	13-79 through 13-82	8/20/13
Lemon Grove School District	13-79 through 13-82	8/20/13
Mountain Empire Unified School District	13-79 through 13-82	8/20/13

National School District	13-79 through 13-82	8/20/13
Oceanside Unified School District	13-79 through 13-82	8/20/13
Poway Unified School District	13-79 through 13-82	8/20/13
Ramona Unified School District	13-79 through 13-82	8/20/13
Rancho Santa Fe School District	13-79 through 13-82	8/20/13
San Diego Unified School District	13-79 through 13-82	8/20/13
San Dieguito Union High School District	13-79 through 13-82	8/20/13
San Marcos Unified School District	13-79 through 13-82	8/20/13
San Pasqual Union School District	13-79 through 13-82	8/20/13
San Ysidro School District	13-79 through 13-82	8/20/13
Santee School District	13-79 through 13-82	8/20/13
Solana Beach School District	13-79 through 13-82	8/20/13
South Bay Union School District	13-79 through 13-82	8/20/13
Spencer Valley School District	13-79 through 13-82	8/20/13
Sweetwater Union High School District	13-79 through 13-82	8/20/13
Vallecitos School District	13-79 through 13-82	8/20/13
Valley Center-Pauma Unified School	13-79 through 13-82	8/20/13
Vista Unified School District	13-79 through 13-82	8/20/13
Warner Unified School District	13-79 through 13-82	8/20/13
Grossmont-Cuyamaca Community	13-79 through 13-82	8/20/13
Miracosta Community College District	13-79 through 13-82	8/20/13
Palomar Community College District	13-79 through 13-82	8/20/13
San Diego Community College District	13-79 through 13-82	8/20/13
Southwestern Community College Dist.	13-79 through 13-82	8/20/13