



# School Business Law Update

TEL: 661.636.4830  
FAX: 661.636.4843  
E-mail: sls@kern.org  
www.schoolslegalservice.org

October 22, 2008

## NEW LEGISLATION EXPANDS DISCLOSURE REQUIREMENTS FOR NON-VOTER-APPROVED DEBT

Many school districts use debt instruments for financing purposes which do not require the approval of the voters, such as certificates of participation (COPs). Under existing law, when a school district governing board decides to issue COPs (or to issue revenue bonds or to enter into an agreement with the California School Finance Authority), the district is required to notify the county superintendent of schools and the county auditor. Repayment schedules and evidence of the district's ability to repay the obligation must also be provided to the county superintendent, county auditor, and to the public. The law permits the county superintendent and county auditor, within 15 days of receiving the information, to comment publicly to the district governing board concerning the district's ability to repay the debt. County boards of education have a similar disclosure obligation to the Superintendent of Public Instruction, who in turn has the ability to publicly comment on the county board's ability to repay the debt. (Education Code section 17150.)

Effective January 1, 2009, Assembly Bill 2197 (Mullin) will now require that those disclosures be made at least 30 days before approval of a COP. In addition, disclosure will now be required for other kinds of debt instruments secured by real property which do not require voter approval. Districts will be required to furnish information necessary to assess the anticipated effect of the debt issuance, including repayment schedules, evidence of the ability to repay, as well as costs of issuance.

Finally, the new law amends Education Code section 42133.5 to prohibit the use of proceeds from COPs and other non-voter approved debt secured by real property for general operating purposes of the district, regardless of the district's budget certification.

The author of the legislation, Assembly Member Mullin, argued that several districts have run into financial difficulty due to over-reliance on debt instruments such as COPs, citing situations in which districts issued large amounts of COPs and the projected level of developer fees and other repayment sources did not materialize. The Senate Floor Analysis states that "by the time county and state entities are notified, the decision to issue COPS or other nonvoter approved debt would have been made with no ability to repay the debt."

October 22, 2008

Page 2

---

Districts should notify their financial advisors of this requirement so the 30-day notice period can be incorporated into their issuance schedule.

If you have questions or need further information on this topic, please do not hesitate to contact our office.

— Grant Herndon

*School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*