

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2020 Agenda Item #W-13

## Subject

Request by the **Hayward Unified School District** to waive California *Education Code* sections 15106 and 15270(a) to allow the district to exceed its bonded indebtedness limit. Total bonded indebtedness may not exceed 2.50 percent of the taxable assessed valuation of property for unified school districts. Depending on the type of bond, a tax rate levy limit of $60 per $100,000 of assessed value for unified school districts may also apply.

## Waiver Number

25-1-2020

## Type of Action

Action, Consent

## Summary of the Issues

The Hayward Unified School District’s (Hayward USD) bonded indebtedness is statutorily limited not to exceed 2.50 percent, which prohibits it from proceeding with its proposed issuance of $236.7 million from Measure H, which was approved by voters on November 6, 2018. The district is requesting that the State Board of Education (SBE) authorize the district to exceed its statutory bonding capacity limit to a rate up to, but not to exceed, 3.32 percent.

## Authority for Waiver

California *Education Code* (*EC*)Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends that the bonded indebtedness limit be waived for the district with the following conditions:  
(1) the period of request does not exceed the recommended period on Attachment 1; (2) the total bonded indebtedness does not exceed the recommended new maximum shown on Attachment 1; (3) the district does not exceed the statutory tax rate; (4) the waiver is limited to the sale of bonds approved by the voters on the measure noted on Attachment 1; and (5) the district complies with the statutory requirements of   
Assembly Bill 182 related to school bonds, which became effective on January 1, 2014; and (6) the district engages with all of the bargaining units to discuss their concerns regarding the district’s bond program and including a process for the Citizens’ Oversight Committee to regularly engage with stakeholders regarding concerns with the district’s bond program.

## Summary of Key Issues

The California *EC* provides limits related to a district’s total bonded indebtedness.  
*EC* sections 15106 and 15270(a) limit a unified school district’s total general obligation (G.O.) bond indebtedness to 2.50 percent.

To raise funds to build or renovate school facilities, with voter authorization, school districts may issue G.O. bonds. Under Proposition 46, school districts are allowed to increase the property tax rate above one percent for the period necessary to pay off new G.O. bonds if the following conditions are met:

* Two-thirds of those voting in a local election have approved the issuance of the bonds.
* The money raised through the sale of the bonds is exclusively used to purchase or improve land and buildings.

In November 2000, districts were given another option for authorizing and issuing bonds when California voters passed Proposition 39, which allows school bonds to be approved with a 55 percent majority vote if the district abides by several administrative requirements, such as establishing an independent Citizens’ Oversight Committee to oversee the use of the funds. Once G.O. bonds are authorized, school districts issue the bonds in increments as needed to fund their facility projects. When the voters authorize a local G.O. bond, they are simultaneously authorizing a property tax increase to pay the principal and interest on the bond. For Proposition 39 bonds, *EC* Section 15270(a) limits the tax rate levy authorized in each election to $60 per $100,000 of taxable property for unified school districts.

Without a waiver, school districts that are close to their bonding capacity must decide either to issue fewer bonds, delay the issuance of bonds until their assessed valuation increases, or obtain other more expensive non-bond financing to complete their projects, the costs of which could be paid from district general funds. Therefore, the CDE has historically recommended that the SBE approve related waiver requests with the condition that the statutory tax levies are not exceeded at the time the bonds are issued.

AB 182 (Chapter 477, Statutes of 2013) has established parameters for the issuance of local education bonds that allow for the compounding of interest, including capital appreciation bonds (CABs). AB 182 requires a district governing board to do the following:

* Before the bond sale, adopt a resolution at a public meeting that includes specific criteria, including being publicly noticed on at least two consecutive meeting agendas.
* Be presented with an agenda item at a public board meeting that provides a financial analysis of the overall costs of the bonds, a comparison to current interest bonds, and reasons why the compounding interest bonds are being recommended.
* After the bond sale, present actual cost information at the next scheduled public meeting and submit the cost information of the sale to the California Debt and Investment Advisory Commission.

Hayward USD wishes to proceed with its proposed issuance for the $236.7 million from Measure H, which was approved by voters on November 6, 2018. The issuance will be used to provide safe/modern schools; upgrade aging classrooms/school facilities; update classroom technology; provide art/music classrooms; improve accessibility for students with disabilities; upgrade fire safety/emergency communications/school security systems; install solar panels; repair leaky roofs; and update plumbing/heating/ventilation systems. The issuance of $236.7 million will increase the district’s outstanding bonded indebtedness limit to a rate up to, but not to exceed, 3.32 percent.

As originally submitted, the waiver request cited all four bargaining units as having registered neutral votes toward the request. After corresponding with Hayward USD, and determining that more information was needed, the district held a virtual meeting on April 21, 2020, with the representatives of each of the four bargaining units. The outcome of the meeting was two bargaining units supporting the waiver and two bargaining units opposing it. The opposition was registered by representatives of Service Employees International Union (SEIU) -- Paraprofessionals/Youth Enrichment Program, Local 1021 (which states a belief that Hayward USD has not managed funding correctly in the past), and SEIU – Maintenance and Operations Safeco Unit, Local 1021 (which asserts that Hayward USD has a history of not providing its labor partners with budgetary information in a timely and accurate manner, and cites a desire for greater oversight).

### Demographic Information

Hayward USD has a student population of 19,909 and is located in Alameda County.

**Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information Web page at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.>

## Summary of Previous State Board of Education Discussion and Action

The SBE has approved all bond limit waiver requests limited to the sale of already authorized bonds and at the tax rate levy stated on the bond measure.

## Fiscal Analysis

Approval of the waiver would allow the district to accelerate its issuance of voter-approved bonds.

## Attachments

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Hayward Unified School District General Waiver Request  
  25-1-2020 (4 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* (*EC*) Section 15106 et seq.

| **Waiver Number** | **District** | **Period of Request** | **District’s Request** | **CDE Recommended** | **Bargaining Unit Representatives** | **Local Board, Public Hearing, and Advisory Committee Approval** |
| --- | --- | --- | --- | --- | --- | --- |
| 25-1-2020 | Hayward Unified School District | **Requested:** March 1, 2020 to December 31, 2028  **Recommended:** July 9, 2020 to December 31, 2028 | **Requested:** Debt Limit: 3.32%  **Recommended:** Debt Limit: 3.32% | Debt Limit: 3.32%  Limited to sale of bonds applicable to Measure H, approved by voters in the November 2018 election  Tax Rate: $60 per $100,000 (authorization approved under Proposition 39) | Association of Educational Office and Technical Employees Deisy Bates, President 4/21/2020 – **Support**  Hayward Education Association Mercedes Faraj, President 4/21/2020 – **Support**  Service Employees International Union (SEIU) –  Maintenance & Operations Safeco Unit, Local 1021 Wendy Whittaker, President 4/21/2020 – **Oppose**  SEIU – Paraprofessionals/ Youth Enrichment Program, Local 1021 Khadijah Abdulhaqq, President 4/21/2020 – **Oppose** | Local Board Approval Date: 11/13/2019  Public Hearing Date: 11/13/2019  Public Hearing Advertised: Posted at district main office, Hayward City Hall and Hayward Library  Citizens' Bond Oversight Committee 9/19/2019 **No Objections** |

Created by the California Department of Education

May 4, 2020

## Attachment 2: **Hayward Unified School District General** **Waiver Request** 25-1-2020

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 0161192

Waiver Number: 25-1-2020

Active Year: 2020

Date In: 1/29/2020 10:12:16 AM

Local Education Agency: Hayward Unified

District Address: 24411 Amador St.

Hayward, CA 94544

Start: 3/1/2020

End: 12/31/2028

Waiver Renewal: No

Waiver Topic: School Construction Bonds

*Ed Code* Title: Bond Indebtedness Limit - Unified S.D.

*Ed Code* Section: 15106, 15270(a)

*Ed Code* Authority: 33050

*Education Code* or *CCR* to Waive: 15106. A unified school district or community college district may issue bonds that, in aggregation with bonds issued pursuant to Section 15270, shall not exceed [2.5] percent of the taxable property of the school district or community college district, or the school facilities improvement district, if applicable, as shown by the last equalized assessment of the county or counties in which the district is located. In computing the outstanding bonded indebtedness of a unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

15270. (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed [2.5] percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars ($60) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIIIA of the California Constitution.

Outcome Rationale: Hayward Unified School District has a Facilities Master Plan that was created in 2004 that outlined a 20-year plan to invest in necessary repairs and upgrades to District schools. Measure I in 2008 and Measure L in 2014 initiated the process of addressing identified needs, but there were still major facilities repairs and upgrades that are needed. District voters approved Measure H in November 2018 with 72% support. Measure H funding will allow the District to continue to address the needs identified in the Facilities Master Plan, as well as complete facility upgrade projects already in progress.

In March 2019, the District issued the first series of bonds under the Measure H authorization for a par amount of $145,000,000. With the funding from the Series 2019 bonds, the District completed 11 projects at 8 campuses during the 2019 summer break. These projects included roof replacements, exterior painting, fire alarm, public address, and clock system replacements. Over 40 critical infrastructure improvements (roof replacements, fire alarm, public address, and clock system replacements, paving, painting, and/or improved security enhancements) are scheduled this year across 16 campuses. The District is also planning for a District Performing Arts Center, which would be New Construction located at our Mt. Eden High School. The District is also in the process of implementing a three-phased construction of solar arrays at' most of its campuses. Once completed, these solar arrays will provide nearly all the District's electricity needs.

The remaining bond funding from Measure H will focus on classroom modernization, modernization of Lorin Eden Elementary, modernization of Winton Middle, and critical infrastructure improvements (roof replacements, fire alarm, public address, and clock system replacements, paving, painting, and/or improved security enhancements) at our remaining campuses.

To continue with the Measure H projects, the District will need to issue additional bonds (approximately $170.0 million in 2020 and approximately $66.7 million in 2022). We are requesting a bonding capacity waiver to issue bonds up to 3.32% of the total taxable property of the District. Our current projections show that the District will be back within their statutory bonding capacity levels by December 2028.

We also want to point out that our bonding capacity on a per student basis is low compared to other school districts in Alameda County. This waiver will allow us to continue with the projects that our community has approved to ensure that our student have a safe learning environment. Furthermore, the District believes that all students in California should have access to safe and modem school facilities. The current bonding capacity requirements tie access to capital funding to local wealth levels. By doing so, we believe that it creates inequitable access to capital facilities funding.

Student Population: 19,909

City Type: Urban

Public Hearing Date: 11/13/2019

Public Hearing Advertised: Board Meeting

Local Board Approval Date: 11/13/2019

Community Council Reviewed By: Citizens' Bond Oversight Committee

Community Council Reviewed Date: 9/19/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Allan Garde

Position: Assistant Superintendent of Business

E-mail: [agarde@husd.k12.ca.us](file:///C:\Users\bwolfe\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\12208E62\agarde@husd.k12.ca.us)

Telephone: 510-784-2600

Bargaining Unit Date: 10/03/2019

Name: Assoc Educational Office and Technical Employees

Representative: Deisy Bates

Title: President

Phone: (510) 357-1806

Position: Neutral

Comments:

Bargaining Unit Date: 10/03/2019

Name: Hayward Education Association

Representative: Mercedes Faraj

Title: President

Phone: (510) 538-1051

Position: Neutral

Comments:

Bargaining Unit Date: 10/03/2019

Name: Service Employees International Union (SEIU) – Maintenance & Operations Safeco Unit, Local 1021

Representative: Wendy Whittaker

Title: President

Phone: (510) 723-3170

Position: Neutral

Comments:

Bargaining Unit Date: 10/03/2019

Name: SEIU – Paraprofessionals/ Youth Enrichment Program, Local 1021

Representative: Khadijah Abdulhaqq

Title: President

Phone: (510) 723-3190

Position: Neutral

Comments: