STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

March 11, 2008

Mr. Keith Peterson
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: **Draft Staff Analysis and Hearing Date**
Prevailing Wage Rate, 01-TC-28
Clovis Unified School District
Labor Code Sections 1720,1720.2,1720.3,1726,1727,1733,1735,1741,1742, 1742.1,1743,1750,1770,1771,1771.5,1771.6,1772,1773,1773.1,1773.2,1773.3, 1773.5,1773.6,1775,1776,1777.1,1777.5,1777.6,1777.7,1812,1813,1861;
Public Contract Code, Section 22002;
Statutes 1976, Ch. 281; Statutes 1976, Ch. 538; Statutes 1976, Ch. 599; Statutes 1976, Ch. 861; Statutes 1976, Ch. 1174; Statutes 1976, Ch. 1179; Statutes 1977, Ch. 423; Statutes 1978, Ch. 1249; Statutes 1979, Ch. 373; Statutes 1980, Ch 962; Statutes 1980, Ch. 992; Statutes 1981, Ch 449; Statutes 1983, Ch. 681; Statutes 1983, Ch. 1054; Statutes 1988, Ch. 160; Statutes 1989, Ch. 278; Statutes 1989, Ch. 1224; Statutes 1992, Ch. 913; Statutes 1992, Ch. 1342; Statutes 1993, Ch.589; Statutes 1997, Ch. 17; Statutes 1997, Ch. 757; Statutes 1998, Ch. 443; Statutes 1998, Ch. 485; Statutes 1999, Ch. 30; Statutes 1999, Ch. 83; Statutes 1999, Ch. 220; Statutes 1999, Ch. 903; Statutes 2000, Ch. 135; Statutes 2000, Ch. 875; Statutes 2000, Ch. 881; Statutes 2000, Ch. 920; Statutes 2000, Ch. 954; Statutes 2001, Ch. 804; Statutes 2001, Ch. 938;
Title 8, CCR, Sections 16000, 16001-16003, 16100-16102, 16200-16206, 16300-16304, 16400-16403, 16410-16414, 16425, 16426-16428, 16429-16432, 16433, 16436-16439, 16500, 16800-16802,17201-17212, 17220-17229, 17230-17237,17240-17253, 17260-17264

Dear Mr. Peterson:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **Tuesday, April 1, 2008**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you

would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, May 29, 2008** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about May 16, 2008. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

Paula Higashi
Executive Director

Enc. Draft Staff Analysis

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Labor Code Sections 1720, 1720.2, 1720.3, 1726, 1727, 1733, 1735, 1741, 1742, 1742.1, 1743, 1750, 1770, 1771, 1771.5, 1771.6, 1771.7, 1772, 1773, 1773.1, 1773.2, 1773.3, 1773.5, 1773.6, 1775, 1776, 1777.1, 1777.5, 1777.6, 1777.7, 1812, 1813, 1861

Public Contract Code Section 22002

Statutes 2002, Chapter 868 (AB 1506); Statutes 2001, Chapter 938 (SB 975); Statutes 2001, Chapter 804 (SB 588); Statutes 2000, Chapter 954 (AB 1646); Statutes 2000, Chapter 920 (AB 1883); Statutes 2000, Chapter 881 (SB 1999); Statutes 2000, Chapter 875 (AB 2481); Statutes 2000, Chapter 135 (AB 2539); Statutes 1999, Chapter 903 (AB 921); Statutes 1999, Chapter 220 (AB 302); Statutes 1999, Chapter 83 (SB 966); Statutes 1999, Chapter 30 (SB 16); Statutes 1998, Chapter 485 (AB 2803); Statutes 1998, Chapter 443 (AB 1569); Statutes 1997, Chapter 757 (SB 1328); Statutes 1997, Chapter 17 (SB 947); Statutes 1993, Chapter 589 (AB 2211); Statutes 1992, Chapter 1342 (SB 222); Statutes 1992, Chapter 913 (AB 1077); Statutes 1989, Chapter 1224 (AB 114); Statutes 1989, Chapter 278 (AB 2483); Statutes 1988, Chapter 160 (SB 2637); Statutes 1983, Chapter 1054 (AB 1666); Statutes 1983, Chapter 681 (AB 2037); Statutes 1981, Chapter 449 (AB 1242); Statutes 1980, Chapter 992 (AB 3165); Statutes 1980, Chapter 962 (BA 2557); Statutes 1979, Chapter 373 (SB 925); Statutes 1978, Chapter 1249 (AB 3174); Statutes 1977, Chapter 423 (SB 406); Statutes 1976, Chapter 1179 (AB 3676); Statutes 1976, Chapter 1174 (AB 3365); Statutes 1976, Chapter 861 (SB 1953); Statutes 1976, Chapter 599 (AB 1125); Statutes 1976, Chapter 538 (AB 2466); Statutes 1976, Chapter 281 (AB 2363)

Title 8, California Code of Regulations Sections 16000, 16001-16003, 16100-16102, 16200-16206, 16300-16304, 16400-16403, 16410-16414, 16425, 16426-16428, 16429-16432, 16433, 16436-16439, 16500, 16800-16802, 17201-17212, 17220-17229, 17230-17237, 17240-17253, 17260-17264

School Facility Program Substantial Progress and Expenditure Audit Guide – May 2003
(Prepared by the Office of Public School Construction)

AB 1506 Labor Compliance Program Guidebook – February 2003
(Prepared by the Division of Labor Standards Enforcement)

Antioch Unified School District Labor Compliance Program
January 17, 2003

Prevailing Wage Rate

01-TC-28

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

This test claim addresses changes to the California Prevailing Wage Law (CPWL), which is "a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds." Contractors for public works projects that exceed $1,000 are required to pay local prevailing wages to construction workers on those projects. The requirement to pay prevailing wages is only applicable to work performed under contract, and is not applicable to work carried out by a public agency with its own forces; the requirement is applicable to contracts let for maintenance work. Local prevailing wage rates are set by the Director of the Department of Industrial Relations.

The Test Claim Statutes, Regulations and Alleged Executive Orders Impose a Partially Reimbursable State-Mandated Program on K-12 School Districts or Community College Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution

The provisions of the CPWL are only applicable when a district contracts with a private entity to carry out a public works project. The cases have consistently held that when a district makes an underlying discretionary decision that triggers mandated costs, no state mandate is imposed. The underlying decision to undertake a public works project is mandated by the state only when the public works project is for the purpose of repair or maintenance of school buildings or property. The underlying decision to contract for such a project is mandated by the state under the Public Contract Code, only when the project is not an emergency as defined and under other specified conditions related to the size of the student body and cost of the project.

The test claim statutes and regulations mandate certain activities when the CPWL provisions are triggered under the above circumstances, and some of those activities impose a new program or higher level of service on districts within the meaning of article XIII B, section 6 of the California Constitution. For some of those activities, however, the test claim statutes and regulations allow the districts to levy fees sufficient to pay for the costs of the newly-mandated activities, and Government Code section 17556, subdivision (d), is applicable to deny reimbursement for them. The remaining three activities do impose costs mandated by the state, thus imposing a partially reimbursable state-mandated program on K-12 school districts and community college districts.

Conclusion

Staff concludes that Labor Code section 1776, subdivisions (g) and (h), and section 16403, subdivision (a), of the Department of Industrial Relations' regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, but only when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113; and
    a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or

b. for districts with an average daily attendance of 35,000 or greater, when the total number of hours on the job exceeds 750, or the material cost exceeds $21,000. (Pub. Contract Code, § 20114.)

2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and

   a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or

   b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds $21,000. (Pub. Contract Code, § 20655.)

3. For any K-12 school district or community college district that is subject to the Uniform Public Contract Cost Accounting Act (UPCCAA), when a public project, as defined, is not an emergency as set forth in Public Contract Code section 20113 or 20654, and the project cost will exceed $30,000.[1] (Pub. Contract Code, § 22032.)

Only the following activities for the foregoing projects are reimbursable:

1. Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)

2. Withhold penalties from contractor progress payments for noncompliance with Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g).)

3. Insert in the contract stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776. (Lab. Code, § 1776, subd. (h).)

None of the other test claim statutes, regulations or alleged executive orders that were pled mandate a new program or higher level of service subject to article XIII B, section 6.

Recommendation

Staff recommends the Commission adopt this analysis to partially approve the test claim.

[1] Prior to January 1, 2007, the dollar limit for public projects that could be performed by the district with its own forces was $25,000.

STAFF ANALYSIS

Claimant

Clovis Unified School District

Chronology

06/28/02	Clovis Unified School District ("Claimant") filed test claim with the Commission on State Mandates ("Commission")
07/08/02	Commission staff deemed the test claim complete
08/14/02	The Department of Industrial Relations requested an extension of time, for an additional 90 days, to file comments on the test claim
08/15/02	Commission staff approved extension of time, to November 13, 2002, to file comments on the test claim
08/19/02	Claimant filed missing pages of the test claim with the Commission
11/05/02	The Department of Finance requested an extension of time, for an additional 60 days, to file comments on the test claim
11/06/02	Commission staff approved extension of time, to January 15, 2003, to file comments on the test claim
01/13/03	The Department of Finance requested an extension of time to file comments on the test claim
01/15/03	Commission staff approved extension of time, to January 31, 2003, to file comments on the test claim
01/15/03	The Department of Industrial Relations filed comments on the test claim
01/15/03	The State Building and Construction Trades Council of California, AFL-CIO, filed comments on the test claim
01/29/03	The Department of Finance requested an extension of time to file comments on the test claim
01/30/03	Commission staff approved extension of time, to February 18, 2003, to file comments on the test claim
02/18/03	Claimant filed rebuttal comments on the test claim
02/18/03	The Department of Finance filed comments on the test claim
03/20/03	Claimant filed comments on the test claim
04/02/03	The Department of Industrial Relations filed comments on the test claim
07/31/03	Claimant filed amendment to the test claim
08/14/03	Commission staff deemed the amendment to the test claim complete
08/18/03	The Department of Industrial Relations filed comments on the test claim
09/05/03	The Department of Finance requested a 30-day extension to file comments on the test claim

09/12/03	The Department of Industrial Relations requested an extension of time, for an additional 21 days, to file comments on the test claim
09/15/03	The Department of General Services, Office of Public School Construction, filed comments on the test claim
09/16/03	Commission staff approved extension of time, to October 6, 2003, for the Department of Industrial relations to file comments on the test claim
09/18/03	Claimant filed rebuttal comments on the test claim
10/07/03	The Department of Industrial Relations filed comments on the test claim
10/09/03	The Department of Industrial Relations filed a verification for its August 18, 2003 comments on the test claim
10/14/03	The Department of Finance requested an extension of time, for an additional 30 days, to file comments on the test claim
10/15/03	Commission staff approved extension of time, to November 5, 2003, to file comments on the test claim
10/20/03	Claimant filed rebuttal comments on the test claim
11/06/03	Claimant filed rebuttal comments on the test claim
11/05/03	The Department of Finance filed comments on the test claim
12/08/03	Claimant filed rebuttal comments on the test claim
01/28/04	The Department of Industrial Relations requested an extension of time, for an additional 30 days, to file comments on the test claim
01/30/04	Commission staff approved extension of time, to March 3, 2004, to file comments on the test claim
07/11/07	Commission staff requested claimant to provide specific versions of regulations claimed
07/23/07	The Department of Industrial Relations requested postponement of the December 6, 2007 hearing on the test claim
07/26/07	Commission staff denied the request to postpone hearing the test claim
07/25/07	Claimant requested an extension of time, for an additional four weeks, to file regulations information requested by Commission staff
08/01/07	Commission staff approved extension of time, to August 29, 2007, to file the information requested
08/30/07	Claimant submitted additional regulations information requested by Commission staff
03/11/08	Commission staff issued draft staff analysis

Background

This test claim addresses changes to the California Prevailing Wage Law (CPWL),[2] which is "a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds."[3] Contractors for public works projects that exceed $1,000 are required to pay local prevailing wages to construction workers on those projects.[4] The requirement to pay prevailing wages is only applicable to work performed under contract, and is not applicable to work carried out by a public agency with its own forces; the requirement is applicable to contracts let for maintenance work.[5] Local prevailing wage rates are set by the Director of the Department of Industrial Relations.[6]

In addition to state agencies, the CPWL applies to "political subdivisions," which include any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.[7] Thus, the CPWL applies to both school districts and community college districts. The agency or authority awarding the contract for public work is known as the "awarding body."[8]

The overall purpose of the CPWL is to benefit and protect employees on public works projects.[9] Its specific goals are to: 1) protect employees from substandard wages that might be paid if contractors could recruit from cheap-labor areas; 2) permit union contractors to compete with nonunion contractors; 3) benefit the public through the superior efficiency of well-paid employees; and 4) compensate nonpublic employees with higher wages for the absence of job security and benefits enjoyed by public employees.[10]

The CPWL does not generally cover federal projects. Those projects are addressed in the federal Davis-Bacon Act (40 USC § 276a(a)), which was enacted for a similar purpose, i.e., to protect local wage standards by preventing federal contractors from basing their bids on wages lower than those prevailing in the area.[11] However, the application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies.[12]

---

[2] Labor Code sections 1720 et seq.

[3] *Road Sprinkler Fitters, Local Union 669 v. G & G Fire Sprinkler, Inc.* (2002) 102 Cal.App.4th 765, 776.

[4] Labor Code section 1771.

[5] *Ibid.*

[6] Labor Code section 1770.

[7] Labor Code section 1721.

[8] Labor Code section 1720.

[9] *Lusardi Construction Co. v. Aubry* (1992) 1 Cal 4th 976, 987.

[10] *Ibid.*

[11] *Southern California Labor Management Operating Engineers Contract Compliance Committee v. Aubry* (1997) 54 Cal.App.4th 873, 882-883.

[12] Title 8, California Code of Regulations, section 16001, subdivision (b).

Public Works Defined

The Labor Code generally defines "public works" as construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds,[13] and includes: 1) design and preconstruction work;[14] 2) work done for irrigation, utility, reclamation and improvement districts;[15] 3) street, sewer, or other improvement work for public agencies;[16] 4) laying of carpet;[17] 5) certain public transportation demonstration projects;[18] and 6) hauling of refuse from a public works site to an outside disposal location.[19] Public works projects also include maintenance,[20] as defined.[21]

The Labor Code also defines "paid for in whole or in part out of public funds" as payment of funds directly to or on behalf of a public works contractor, subcontractor or developer,[22] including various other types of payments,[23] and provides several types of projects that are excluded from that definition.[24]

Prevailing Wage Rates

Prevailing wage rates are set by the Director of the Department of Industrial Relations (DIR),[25] generally by reviewing local wage rates established by collective bargaining agreements and

---

[13] Labor Code section 1720, subdivision (a)(1).

[14] *Ibid.*

[15] Labor Code section 1720, subdivision (a)(2).

[16] Labor Code section 1720, subdivision (a)(3).

[17] Labor Code section 1720, subdivisions (a)(4) and (a)(5).

[18] Labor Code section 1720, subdivision (a)(6).

[19] Labor Code section 1720.3.

[20] Labor Code section 1771; Title 8, California Code of Regulations, section 16001, subdivision (f).

[21] "Maintenance" is defined as: (1) routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system, or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired; and (2) carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures. Janitorial services of a routine, recurring or usual nature is excluded. (tit. 8, Cal. Code Regs., § 16000)

[22] Labor Code section 1720, subdivision (b)(1).

[23] Labor Code section 1720, subdivisions (b)(2) through (b)(6).

[24] Labor Code section 1720, subdivision (c).

[25] Labor Code section 1770.

rates that may have been predetermined for federal public works.[26] The awarding body for any contract for public works is required to specify in the call for bids, the bid specifications and the contract itself, what the prevailing wage rate is for each craft, classification or type of worker needed to execute the contract.[27] In lieu of specifying the wage rates in the call for bids, bid specifications and the contract itself, the awarding body may include a statement in those documents that copies of the prevailing wage rates are on file at its principal office, which shall be made available to any interested party on request.[28] The awarding body is required to post at each job site a copy of the determination by the DIR Director of the prevailing wage rates.[29]

Prospective bidders, representatives of any craft classification or type of worker involved, or the awarding body may challenge the declared prevailing wage rates with DIR within 20 days after commencement of advertising of the bids.[30] The Director of DIR begins an investigation and within 20 days, or longer if agreed upon by all the parties, makes a determination and transmits it in writing to the awarding body and the interested parties, which delays the closing date for submitting bids or starting of work until five days after the determination.[31] The Director's determination is final, and shall be considered the determination of the awarding body.[32]

Payroll Records

Contractors and subcontractors subject to the CPWL are required to keep accurate payroll records showing name, address, social security number, work classification, straight time and overtime hours worked each day and week and actual wages paid to each worker in connection with the public work,[33] and provide certified copies or make such records available for inspection, upon request of the employee, the awarding body, Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards.[34] Requests by the public are required to be made through the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement,[35] and shall be redacted to prevent disclosure of an individual's name, address and social security number.[36] The requesting party is required to reimburse the costs of preparing the records by the contractor, subcontractors, and the entity

---

[26] Labor Code section 1773.

[27] Labor Code section 1773.2.

[28] *Ibid.*

[29] *Ibid.*

[30] Labor Code section 1773.4.

[31] *Ibid.*

[32] *Ibid.*

[33] Labor Code section 1776, subdivision (a).

[34] Labor Code section 1776, subdivision (b).

[35] Labor Code section 1776, subdivision (b)(3).

[36] Labor Code section 1776, subdivision (e).

through which the request was made.[37] The awarding body is required to insert stipulations in the contract to effectuate these provisions.[38]

Discrimination on Public Works Employment Prohibited

Labor Code section 1735 prohibits contractors from discriminating on public works employment for particular categories of persons, and every contractor violating the section is subject to all the penalties imposed for a violation of the CPWL.

Enforcement of CPWL

The awarding body is required to "take cognizance" of violations of the CPWL committed in the course of the public works contract, and shall promptly report any suspected violations to the Labor Commissioner.[39]

The Labor Commissioner is charged with enforcing the CPWL.[40] If the Labor Commissioner determines after an investigation that there has been a violation of the CPWL, the Labor Commissioner issues a civil wage and penalty assessment to the contractor or subcontractor or both.[41] Prior to July 1, 2001, the only way to challenge such an assessment was in court. On and after July 1, 2001, contractors or subcontractors may obtain review of a civil wage and penalty assessment through an informal settlement meeting with the Labor Commissioner,[42] or via an administrative hearing.[43] Until January 1, 2009, hearings are conducted before the DIR Director with an impartial hearing officer; thereafter the hearing will be conducted by an administrative law judge.[44] An affected contractor or subcontractor may appeal the administrative decision within 45 days of service of the decision by filing a petition for writ of mandate under Code of Civil Procedure section 1094.5.[45] This process provides the exclusive remedy for review of a civil wage and penalty assessment by the Labor Commissioner.[46]

When the Labor Commissioner issues a civil wage and penalty assessment, the awarding body is required to withhold and retain such moneys from contractor payments sufficient to satisfy the assessment.[47] The amounts withheld cannot be disbursed until receipt of a final order that is no longer subject to judicial review.[48] The awarding body that has withheld funds in

---

[37] Labor Code section 1776, subdivision (b)(3).

[38] Labor Code section 1776, subdivision (h).

[39] Labor Code section 1726.

[40] Labor Code section 1741.

[41] *Ibid.*

[42] Labor Code section 1742.1, subdivision (b).

[43] Labor Code section 1742, subdivisions (a) and (b).

[44] Labor Code section 1742, as amended by Statutes 2004, chapter 685.

[45] Labor Code section 1742, subdivision (c).

[46] Labor Code section 1742, subdivision (g).

[47] Labor Code section 1727, subdivision (a).

[48] Labor Code section 1727, subdivision (b).

response to a civil wage and penalty assessment, upon receipt of the final order, shall remit withheld funds to the Labor Commissioner.[49]

Labor Compliance Program

The awarding body can avoid paying prevailing wages for public works projects of $25,000 or less when the project is for construction, and $15,000 or less when the project is for alteration, demolition, repair or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program (LCP) for all of its public works projects.[50] As part of its duties as an LCP, the awarding body is required to do the following: 1) place appropriate language concerning CPWL in all bid invitations and public works contracts; 2) conduct a prejob conference with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract; 3) review and audit payroll records (that the contractor is required to keep) to verify compliance with CPWL; 4) withhold contract payments when payroll records are delinquent or inadequate; and 5) withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.[51]

If the awarding body enforces the CPWL as an LCP, the awarding body is entitled to keep any penalties assessed. Before taking any action, the awarding body is required to provide notice of the withholding of any contract payments to the contractor and any subcontractor.[52] The same process for review of a civil wage and penalty assessment made by the Labor Commissioner, as set forth in Labor Code sections 1742 and 1742.1, is invoked.[53] Any amount recovered from the contractor shall first satisfy the wage claim, before being applied to penalties, and if insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.[54] Wages for workers who cannot be located are placed in the Industrial Relations Unpaid Wage Fund and held in trust.[55] Penalties of not more than $50 per day for each worker paid less than the prevailing wage rates[56] are paid into the general fund of the awarding body that enforced the CPWL.[57]

Awarding bodies that choose to use funds derived from the Kindergarten-University Public Education Facilities Bond Acts of 2002[58] or 2004[59] for public works projects are required to

---

[49] Labor Code section 1742, subdivision (f).

[50] Labor Code section 1771.5, subdivision (a).

[51] Labor Code section 1771.5, subdivision (b).

[52] Labor Code section 1771.6, subdivision (a).

[53] Labor Code section 1771.6, subdivisions (b) and (c).

[54] Labor Code section 1771.6, subdivision (d).

[55] Labor Code section 1771.6, subdivision (e).

[56] Labor Code section 1775.

[57] Labor Code section 1771.6, subdivision (e).

[58] Proposition 47, approved by the voters at the November 5, 2002 statewide general election.

[59] Proposition 55, approved by the voters at the March 2004 statewide direct primary election.

adopt and enforce an LCP or contract with a third party to adopt and enforce an LCP.[60] These funds are allocated through the School Facility Program established by Chapter 12.5 of the Education Code. The State Allocation Board was required to increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the LCP.[61] Awarding bodies that choose to use funds derived from the Kindergarten-University Public Education Facilities Bond Act of 2006,[62] however, are not subject to this requirement.

Employment of Apprentices on Public Works Projects

Properly registered apprentices are allowed to work on public works projects and must be paid prevailing wages for apprentices in the trade.[63] Apprenticeship standards are established by the DIR Division of Apprenticeship Standards,[64] and ratios of apprentices to journey level workers in a particular craft or trade on the public work are established by the particular apprenticeship program.[65] Contractors must meet various requirements with regard to employing apprentices, and the awarding body is required to include stipulations to that effect in the contract.[66]

School Facility Construction, Repairs and Funding

Beginning in 1947, the Legislature authorized the State Allocation Board to allocate funds for building and repairing schools. Legislation enacted in the late 1940s and early 1950s established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system..."[67] The State Department of General Services[68] administers and the State Allocation Board (SAB) allocates and apportions the funds made available to the districts with priority given to districts where the children will benefit most from additional facilities.[69]

The School Facilities Act[70] establishes a state program to provide state per pupil funding for new construction and modernization of existing school facilities[71] to be administered by the SAB.[72]

---

[60] Labor Code section 1771.7, subdivision (a).

[61] Labor Code section 1771.7, subdivision (e).

[62] Proposition 1D, approved by the voters at the November 7, 2006 statewide general election.

[63] Labor Code section 1777.5, subdivisions (a) and (b).

[64] Labor Code section 1777.5, subdivision (c).

[65] Labor Code section 1777.5, subdivision (g).

[66] Labor Code section 1777.5, subdivision (n).

[67] Education Code sections 15700, et seq.

[68] Education Code section 15702.

[69] Education Code section 15704.

[70] Education Code sections 17070.10 et seq.

The Education Code sets out requirements that potential school building sites must meet.[73] Prior to commencing acquisition of real property for a new schoolsite or addition to an existing schoolsite, the governing board of a school district is required to evaluate property at a public hearing using the site selection standards established by the Department of Education.[74] Moreover, in the exercise of its police power, the state may through legislative action control the protection of public health, safety, and comfort in the erection of school buildings.[75] The Department of General Services is generally required to supervise the design and construction of any school building or the reconstruction or alteration of or addition to any school building.[76] Nevertheless, *whether* a school district decides to engage in a project to construct a school building is within the discretion of its governing board.[77]

Education Code section 17366 states the Legislature's intent to provide safe educational facilities for California schoolchildren as follows:

> [T]he Legislature intends that the governing board of each school district adopt a plan for the orderly repair, reconstruction, or replacement of school buildings not repaired, reconstructed, or replaced in accordance with this article.

Whenever the structural condition of any school building has been examined by designated entities or under the authorization of law and a report of the examination has been made to the governing board showing the building is unsafe for use, the governing board is required to immediately prepare an estimate of the cost necessary to make such repairs to the building(s) as are necessary, or, if necessary, to reconstruct or replace the building so that the building when repaired or reconstructed, or any building erected to replace it, shall meet such standards of structural safety as are established in accordance with law.[78] Using the information from the examination and report, the governing board is required to establish a system of priorities for the repair, reconstruction, or replacement of unsafe school buildings.[79] If the governing board of the school district complies with these provisions, no member of that governing board may be held personally liable for injury to persons or damage to property resulting from the fact that a school building was not constructed under the requirements of Education Code sections 17280 et seq.[80]

---

[71] Title 2, California Code of Regulations, section 1859.

[72] Education Code section 17070.35.

[73] Education Code sections 17210, et seq.

[74] Education Code sections 17211 and 17251.

[75] *Hall v. City of Taft* (1956) 47 Cal.2d 177, 184.

[76] Education Code section 17280.

[77] *People v. Oken* (1958) 159 Cal.App.2d 456, 460.

[78] Education Code section 17367.

[79] *Ibid.*

[80] Education Code section 17371

Education Code section 17593 requires K-12 school districts to keep schools in repair:

> The clerk of each district except a district governed by a city or city and county board of education shall, under the direction of the governing board, keep the schoolhouses in repair during the time school is taught therein, and exercise a general care and supervision over the school premises and property during the vacations of the school.

Education Code section 17565 requires the governing board of any school district to "furnish, repair, insure against fire, and in its discretion rent the school property of its districts."

Education Code section 17002 defines "good repair" to mean:

> [T]he facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards for which the facility was designed and constructed.

With regard to community college districts, Education Code section 81601 states:

> The governing board of a community college district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. ...

Thus, both K-12 school districts and community college districts are required by statute to repair the school property of their districts.

The Education Code authorizes the County Superintendent of Schools to provide for the maintenance and repair of the property of school districts under his or her jurisdiction that elect to take advantage of this service by paying into the school maintenance and repair fund established for this purpose.[81] The superintendent is authorized to hire labor for such maintenance and repair:

> The superintendent of schools of the county may employ such extra help as is necessary to perform the labor for the maintenance and repair work, as well as to provide for the supervision and transportation of the labor together with the equipment and materials for the work. The cost price of the maintenance and repair services to any school district is the original cost thereof and in addition a sum sufficient to reimburse the county superintendent of schools for all supervision, transportation, equipment, and other expenses, but the sum added shall not in any case exceed 10 percent of the cost of labor and supplies.[82]

Contracting Out for Public Works Projects

The Public Contract Code establishes contracting requirements for school districts and community college districts.[83] Depending on the purpose of the project and estimated dollar

[81] Education Code section 1266.

[82] Education Code section 1269.

[83] Public Contract Code sections 20110 et seq. and 20650 et seq.

amount, the district may be required to contract out to the lowest responsible bidder to accomplish the project. The major requirements are outlined below.

The governing board of any school district or any community college district shall let any contracts involving an expenditure of more than $50,000[84] to the lowest responsible bidder,[85] for any of the following: 1) the purchase of equipment, materials, or supplies to be furnished, sold or leased to the district; 2) services, except construction services; or 3) repairs, including maintenance,[86] that are not a public project as defined in section 22002, subdivision (c).[87, 88] Any contract for a public project, as defined, involving an expenditure of $15,000 or more shall be let to the lowest responsible bidder who shall give security as required by the board or the board shall reject all bids.[89]

Notwithstanding the preceding requirements, in the case of an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college or public schools to permit the continuance of existing classes, or to avoid danger to life or property, the governing board of a school district or community college district may, by unanimous vote, with the approval of the county superintendent of schools, either: 1) make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing materials or

---

[84] Adjusted annually for inflation pursuant to Public Contract Code sections 20111, subdivision (d), and 20651, subdivision (d).

[85] The lowest responsible bidder shall provide security as the board requires, or all bids shall be rejected. (Pub. Contract Code, § 20111 and 20651.)

[86] Public Contract Code sections 21115 and 20656 define "maintenance" as "routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired." It includes but is not limited to: "carpentry, electrical, plumbing, glazing, and other craftwork designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures." It does not include, among other types of work: "janitorial or custodial services and protection of the sort provided by guards or other security forces." It further does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be controlled directly by the provisions of section 20114 or 20655.

[87] Public Contract Code sections 20111, subdivision (a), and 20651, subdivision (a).

[88] Section 22002, subdivision (c) defines "public project" as:
(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
(2) Painting or repainting of any publicly owned, lease, or operated facility.
(3) In the case of a publicly owned utility system, "public project" shall include only construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

[89] Public Contract Code sections 20111, subdivision (b), and 20651, subdivision (b).

supplies without advertising for or inviting bids; or 2) without regard to the number of hours needed for the job, authorize the use of day labor or force account to carry out the project.[90]

Moreover, the governing board of a school district or community college district may make repairs, alteration, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance by day labor or by force account[91] whenever the total number of hours on the job does not exceed 350 hours; for any school district having an average daily attendance of 35,000 or more, or for any community college district whose number of full-time equivalent students is 15,000 or greater, the governing board may perform the above activities by day labor or force account whenever the total number of hours on the job does not exceed 750 hours or when the cost of material for the job does not exceed $21,000.[92]

The Uniform Public Construction Cost Accounting Act (UPCCAA)[93]

The Uniform Public Construction Cost Accounting Act was enacted to "promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state."[94] The Act provides for developing such cost accounting standards by the California Uniform Construction Cost Accounting Commission, and an alternative method for the bidding of public works projects by public entities.[95] A public agency whose governing board has by resolution elected to become subject to this Act may use its own employees to perform public projects of $30,000 or less.[96]

Test Claim Statutes, Regulations and Alleged Executive Orders

Statutes

The test claim statutes encompass changes to the CPWL in the Labor Code beginning in 1976. The relevant provisions are summarized below.

Labor Code Sections 1720, 1720.2 and 1720.3: New types of public works projects were added with these sections:

---

[90] Public Contract Code sections 20113 and 20654.

[91] In the context of the CPWL, work done by "force account" means work done by the local agency's own employees as distinguished from work performed pursuant to contract with a commercial firm for similar services. (70 Ops.Cal.Atty.Gen. 92, 97 (1987).)

[92] Public Contract Code sections 20114 and 20655.

[93] Public Contract Code sections 22000 et seq.

[94] Public Contract Code section 22001.

[95] *Ibid.*

[96] Public Contract Code section 22032; prior to January 1, 2007, the dollar limit for public projects that could be performed by the district was $25,000.

- Section 1720 was modified to add public transportation demonstration projects, design and preconstruction, including land surveying,[97] and installation projects.
- Section 1720.2 was amended to include projects done under private contract where the property subject to the contract is privately owned but upon completion of the construction work more than 50 percent of the property is leased to the state or a political subdivision for its use, and the construction work is performed according to plans or specifications furnished by the state or a political subdivision with a lease agreement that is entered into between a lessor and the state or political subdivision as lessee, during or upon completion of the project.
- Section 1720.3 was amended to include the removal of refuse from the public works construction site.

Labor Code Section 1726: A requirement was added for the awarding body, which was already required to "take cognizance" of violations, to promptly *report* suspected violations to the Labor Commissioner. The section was further amended to state that if the awarding body determines as a result of its own investigation (under a Labor Compliance Program) that there has been a violation and withholds contract payments, the Labor Compliance Program procedures in section 1771.6 shall be followed.

Labor Code Section 1727: This section was amended to state that if the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a *subcontractor's* violations, the *contractor* is required to withhold money upon request of the Labor Commissioner and transfer that money to the awarding body. In either case, the awarding body is limited to disbursing such withheld assessments until after receipt of a final order that is no longer subject to judicial review.

Labor Code Section 1735: This section, as added and amended, prohibits discrimination on public works employment for specified categories of persons, and every contractor violating the section is subject to all the penalties imposed for violations of the chapter.

---

[97] Design and preconstruction was added by Statutes 2000, Chapter 881. The Senate Rules Committee Analysis stated that the bill codified current DIR practice and regulation by including construction inspectors and land surveyors among those workers deemed to be employed upon public works and by insuring that workers entitled to prevailing wage during the construction phase of a public works project will get prevailing wage on the design and pre-construction phases of a project. (Senate Rules Committee, Office of Senate Floor Analyses, SB 1999, August 29, 2000, page 2.) On June 9, 2000, the DIR issued a decision (Public Works Case No. 99-046) finding that construction inspectors hired to do inspection for compliance with applicable building codes and other standards for a public works project were deemed to be employed upon public works and therefore entitled to prevailing wage. This DIR decision was the subject of a lawsuit, *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, which held that even though the DIR had interpreted preexisting statute to include the pre-construction activities as public works and argued that the new statute merely clarified existing law, the Supreme Court found the change in the statute operated prospectively only.

Labor Code Sections 1733, 1741, 1742, 1742.1 and 1743: These sections provide for an administrative process to challenge wage and penalty assessments as set forth:

- Section 1733, relating to court challenges to wage and penalty assessments, was repealed since a new administrative procedure was established.
- Section 1741 established that the Labor Commissioner, after an investigation, shall issue a civil wage and penalty assessment on contractors and/or subcontractors that violate the CPWL, and sets for the procedures for issuing the assessment.
- Section 1742 provided that contractors or subcontractors may obtain review of a civil wage and penalty assessment by the Labor Commissioner, and established procedures and additional appeal provisions. The hearing is conducted before the DIR Director with an impartial hearing officer until January 1, 2009; thereafter the hearing is conducted by an administrative law judge. Subdivision (f) provides that the awarding body that has withheld funds in response to a civil wage and penalty assessment, upon receipt of the final order, shall remit withheld funds to the Labor Commissioner. Subdivision (g) provides that the section is the exclusive remedy for review of a civil wage and penalty assessment by the Labor Commissioner or the awarding body when it acts under a Labor Compliance Program pursuant to section 1771.5.
- Section 1742.1 established procedures to allow for the contractor or subcontractor to meet with the Labor Commissioner to settle a dispute over the civil wage and penalty assessment without the need for formal proceedings. Additional procedures were established to require the awarding body, when enforcing under a Labor Compliance Program, to afford the contractor or subcontractor, upon request of such contractor or subcontractor, the opportunity to meet with the awarding body to attempt to settle any dispute without the need for formal proceedings.
- Section 1743 provided that the contractor and subcontractor shall be joint and severally liable for all amounts due pursuant to a final order, but the Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

Labor Code Section 1750: This section allows the second lowest bidder a right of action against a successful bidder, when the successful bidder has violated the Unemployment Insurance Code. It does not require any activities of awarding bodies.

Labor Code Sections 1770, 1773, 1773.1, 1773.2, 1773.5 and 1773.6: These sections were amended to require the Director of the Department of Industrial Relations to determine the general prevailing rate of per diem wages, using specified criteria, rather than the pre-1975 requirement of having this responsibility rest with the awarding body. Section 1773.2 was thus amended to remove the requirement that the awarding body annually publish prevailing wage rate determinations in the newspaper. Section 1773.5, which previously gave the Director of DIR authority to establish rules and regulations, was amended to add "including, but not limited to, the responsibilities and duties of awarding bodies under this chapter."

Labor Code Section 1771: This section was amended to establish the threshold dollar amount for contracts subject to prevailing wages at $1,000.

Labor Code Sections 1771.5, 1771.6 and 1771.7: These new sections established the ability of an awarding body to elect to initiate and enforce a Labor Compliance Program (LCP). In

exchange, payment of prevailing wages is not required for any public works project of $25,000 or less when the project is for construction, or for any public works project of $15,000 or less when the project is for alteration, demolition, repair or maintenance work. An awarding body that establishes an LCP is also allowed to keep any fines or penalties assessed when it takes enforcement action. As part of its duties as an LCP, the awarding body is required to do the following: 1) place appropriate language concerning CPWL in all bid invitations and public works contracts; 2) conduct a prejob conference with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract; 3) review and audit payroll records (that the contractor is required to keep) to verify compliance with CPWL; 4) withhold contract payments when payroll records are delinquent or inadequate; and 5) withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred. A contractor may appeal an enforcement action by a political subdivision to the Director of DIR.

Section 1771.6 was repealed and added to establish notice and withholding procedures for an awarding body that elects to enforce the CPWL under an LCP.

Section 1771.7 was repealed and later added to require that an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or 2004 for a public works project shall initiate and enforce, or contract with a third party to initiate and enforce, an LCP with respect to that public works project. The provision applies to public works that commence on or after April 1, 2003.

Any awarding body choosing to use such bond funds is required to make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the Labor Compliance Program. If the awarding body is a school district, the governing body of that district shall transmit to the State Allocation Board a copy of the finding. If the awarding body is a community college district, that awarding body shall transmit a copy of the written finding to the Director of the Department of Industrial Relations.

Labor Code Section 1772: This section, which existed prior to 1975, establishes that workers employed by contractors or subcontractors in the execution of any public works project are deemed to be employed on the public work.

Labor Code Section 1775: This section was amended to increase penalty amounts assessed by the Labor Commissioner to be paid by contractors and/or subcontractors for violations of the requirement to pay prevailing wages, and to delete a requirement that the awarding body provide notice to a worker making a wage claim that there is insufficient money available from the contractor to pay such claim. Additionally, the section was changed to extend to subcontractors the liability for insufficient wage payments, and to require contractors to withhold monies due a subcontractor for such insufficient payments that are the subject of a claim filed with the Division of Labor Standards Enforcement.

Labor Code Section 1776: This section was amended to expand the requirements for contractors and subcontractors to keep certified payroll records for public works projects and furnish copies of those records to the awarding body, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards. The amendments also require that copies of such payroll records be made available to the public through the awarding body, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards (but not by the contractor or subcontractor); if the records have not already been made available to

those entities, then the requesting party is required to reimburse the costs of preparation by the contractor, subcontractors and the entity through which the request was made. Any records made available to the public must be marked or obliterated to prevent disclosure of an individual's name, address or social security number. Any records made available to a joint labor-management committee must be marked or obliterated to prevent disclosure of an individual's social security number. The body awarding the contract is required to place stipulations to effectuate these provisions in the contract. In addition, the Director of the Department of Industrial Relations was required to adopt regulations consistent with the California Public Records Act and the Information Practices Act of 1977 governing release of the records including establishment of reasonable fees to be charged for reproducing copies of the records.

Labor Code Section 1777.1: This section was added and amended to deny a contractor or subcontractor the ability to bid on or be awarded a contract for a public works project, or perform work as a subcontractor on a public works project, when the contractor or subcontractor is found by the Labor Commissioner to be in violation of prevailing wage requirements with intent to defraud or in willful violation of the requirements. The section was also modified to require the Labor Commissioner to semi-annually publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project.

Labor Code Sections 1773.3, 1777.5, 1777.6 and 1777.7: These sections generally address apprenticeship requirements that must be met by contractors, and penalties that may be assessed for violation of those requirements. Section 1773.3, a renumbered version of pre-1975 Labor Code section 3098, requires an awarding body whose public works contract will employ apprentices to send a copy of the award to the Division of Apprenticeship Standards within five days of the award.

Labor Code Sections 1812 and 1813: These provisions, which existed prior to 1975, deal with contractor violations of the 8-hour work day limit and 40-hour work week limit. Section 1813 requires the awarding body to cause stipulations regarding these requirements to be placed in the contract, to take cognizance of violations and to report such violations to the Division of Labor Standards Enforcement.

Labor Code Section 1861: This section, which existed prior to 1975, requires contractors to sign and file with the awarding body a certification that the contractor will provide workers' compensation or equivalent insurance.

Public Contract Code Section 22002 (previously section 21002): For purposes of contracting by public agencies and school districts, this section added a definition of "public project:"

> (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, lease, or operated facility.
> (2) Painting or repainting of any publicly owned, leased, or operated facility.
> (3) Construction, erection, improvement or repair of dams, reservoirs, powerplants and electrical transmission lines of 230,000 volts or higher that are publicly owned utility systems.

"Public project" does not include maintenance work; for purposes of the section, "maintenance work" includes:

> (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
> (2) Minor repainting.
> (3) Resurfacing of streets and highways at less than one inch.
> (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

For purposes of the chapter, "facility" is defined as any plant, building, structure, ground facility, publicly owned utility system as limited above, real property, streets and highways, or other public work improvement.

Regulations

California Code of Regulations, Title 8, sections 16000 through 17264, as pled in the test claim, implement and make specific the statutory provisions cited above.

Alleged Executive Orders

School Facility Program Substantial Progress and Expenditure Audit Guide (May 2003): This document, prepared by the Department of General Services' Office of Public School Construction (OPSC), was developed to assist school districts in meeting program reporting requirements for the School Facilities Program (SFP).

Section 3.9 of the document states that for SFP projects that require the district to implement a Labor Compliance Program, the district must submit a copy of the Department of Industrial Relations approved Labor Compliance Program to which the project conformed and, if applicable, a copy of the third party provider contract. The district must also be prepared to submit, upon request: 1) all bid invitation and contracts that must contain language alluding to Labor Code section 1770 through 1780 compliance and verification; 2) evidence that a pre-job conference was conducted with the contractor and subcontractor and that the district enforced the requirements as set in Labor Code section 1770 through 1780; and 3) evidence of weekly submittals of certified copies of payroll for all contractors and subcontractors. If the district uses its own employees to implement and administer the Labor Compliance Program, the district must account for the name of the district employee performing the Labor Compliance Program duties, the salary and benefits of that employee including transportation costs, and a specific breakdown of hours spent by project subject to the Labor Compliance Program requirements.

AB 1506 Labor Compliance Program Guidebook (February 2003): The guidebook was issued by the DIR to address newly enacted Labor Code section 1771.7. Page 3 of the document states:

> This guidebook was prepared by the [Division of Labor Standards Enforcement] and knowledgeable individuals in the private and public sector with a wide range of experience in school district issues, construction projects, public works and labor compliance. This guidebook was intended to facilitate requests to the DIR director from awarding

bodies seeking approval of their own LCPs to conform to the requirements of Labor Code section 1771.7.

This guidebook is not intended to be used as a substitute for the full text of statutes and regulations which comprise the prevailing wage system, or the continually developing body of law which prevailing wage enforcement has generated over the past six decades and will continue to generate in the future. Rather, this information should be viewed as a framework for implementation of an effective LCP designed to enforce prevailing wage requirements consistent with the practice of DLSE.

The guidebook summarizes the relevant provisions of the Labor Code and Title 8, California Code of Regulations, provides instructional materials and practical advice for implementing an LCP, identifies contact and resource information, includes appendices with recommended forms, commonly used terms and a checklist of labor law requirements.

Antioch Unified School District Labor Compliance Program (January 17, 2003): This document was provided as an example of a recently approved LCP, and the DIR stated in its transmittal of the document that Antioch's LCP manual "could be a model for other districts because it contains the most up-to-date information about compliance with labor standards on public works projects."

Prior Test Claim

On December 6, 2007, the Commission heard and denied the *Prevailing Wages (03-TC-13)* test claim, filed by the City of Newport Beach. This test claim alleged various changes to the CPWL, but was applicable only to local agencies and did not show that the underlying decisions to undertake public works projects subject to the CPWL are mandated by the state. The Statement of Decision found the following:

> The provisions of the CPWL are only applicable when a local agency contracts with a private entity to carry out a public works project. The test claim statutes and regulations modified several provisions of the CPWL, and local agencies that contract out for their public works projects are affected by these changes. However, the cases have consistently held that when a local agency makes an underlying discretionary decision that triggers mandated costs, no state mandate is imposed.
>
> Public works projects can arise in a myriad of ways, but there is no evidence in the record or in law to demonstrate that the test claim statutes and regulations legally or practically compel a local agency to undertake a public works project, with a private contractor, subject to the CPWL. In fact, like the exercise of eminent domain in *City of Merced*, the local agency has discretion to undertake public works projects. The courts have underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision that requires the costs to be incurred. Therefore, the Commission finds that the test claim statutes and regulations do not mandate a new program or higher level of service, and thus do not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6.

Claimant's Position

Claimant asserts that the test claim statutes and regulations result in school districts and community college districts incurring costs mandated by the state by creating new state-mandated duties related to the uniquely governmental function of providing for public works. When contracting with third parties for public works as an awarding body, school districts, county offices of education and community colleges are required to do the following:

1. Obtain the applicable general prevailing rate of per diem wages from the Director of Industrial Relations before awarding a contract for public works, pursuant to Labor Code section 1773 and Title 8, California Code of Regulations, section 16202.
2. Ensure that the correct prevailing wage rates have been determined by the Director of Industrial Relations, pursuant to Title 8, California Code of Regulations, section 16204.
3. Request from the Director of Industrial Relations a coverage determination regarding a specific project or type of work to be performed, pursuant to Title 8, California Code of Regulations, section 16001.
4. File a petition for review of a determination of the Director of Industrial Relations of any rate or rates, pursuant to Title 8, California Code of Regulations, section 16302.
5. Appeal an incorrect determination made by the Director of Industrial Relations, pursuant to Labor Code section 1773.4 and Title 8, California Code of Regulations, section 16002.5.
6. Pursuant to Labor Code section 1773.2, include a statement of prevailing rates of per diem wages in the call and advertisements for bids, the bid specifications and in the public works contract itself, or, in lieu of those requirements, the district may include in the call for bids, bid specifications and the contract itself a statement to the effect that copies of the prevailing rate of wages are on file in its principal office, and in that case the district must post the statement of prevailing wages at all job sites.
7. Maintain records of ineligible contractors and subcontractors and refuse to grant them public works projects of the district, pursuant to Labor Code section 1777.1 and Title 8, California Code of Regulations, sections 16800 through 16802.
8. Send copies of all awards to the Division of Apprenticeship Standards and notify the Division of any discrepancies, pursuant to Labor Code section 1777.3.
9. Inspect and audit payroll records of contractors and subcontractors working on district public works projects, when necessary or requested by the Director of Industrial Relations, pursuant to Labor Code section 1776.
10. Obtain and provide copies of the payroll records of the contractors and subcontractors working on district public works projects, when requested by appropriate parties; the records provided are required to be marked or obliterated to prevent disclosure of an individual's name, address and social security number, pursuant to Labor Code section 1776 and Title 8, California Code of Regulations, section 16402.

11. Pay the reasonable fees of a third party when contracting with that third party to initiate and enforce a Labor Compliance Program (LCP), pursuant to Labor Code sections 1771.5 and 1771.7.

12. For works commencing on or after April 1, 2003, oversee compliance with all the requirements of Labor Code sections 1771.5 and 1771.7, Title 8, California Code of Regulations, sections 16425 through16439, and Chapters 2, 3 and 5 of the AB 1506 Labor Compliance Program Guidebook ("Program Guidebook") when contracting with a third party to initiate and enforce an LCP, including but not necessarily limited to the withholding of contract payments and collecting and disbursing penalties and wages at the direction of the third party LCP.

13. Pursuant to Title 8, California Code of Regulations, section 16426, subdivision (a), when seeking approval of an LCP, submit evidence of the district's ability to operate its LCP and offering evidence on the following factors:

    a. Experience and training of the awarding body's personnel on public works labor compliance issues.

    b. The average number of public works contracts the awarding body annually administers.

    c. Whether the LCP is a joint or cooperative venture among awarding bodies, and how the resources and expanded responsibilities of the LCP compare to the awarding bodies involved.

    d. The awarding body's record of taking cognizance of Labor Code violations and withholding in the preceding five years.

    e. The availability of legal support for the LCP.

    f. The availability and quality of a manual outlining the responsibilities and procedures of the LCP to the awarding body.

    g. The method by which the awarding body will transmit notices to the Labor Commissioner of willful violations as defined in Labor Code section 1777.1, subdivision (d).

14. Complete a request for approval deemed by the Director of DIR to be deficient, or make other corrections as required, and resubmitting the request for approval of a LCP, pursuant to Title 8, California Code of Regulations, section 16426, subdivision (b).

15. Submit a request for an extension of an LCP at least 30 days prior to the anniversary date of the initial approval, pursuant to Title 8, California Code of Regulations,
section 16426, subdivision (c).

16. Make a written finding that the district has initiated and enforced, or has contracted with a third party to initiate and enforce, an LCP as described in Labor Code section 1771.5, subdivision (b), pursuant to Labor Code section 1771.7, subdivision (d)(1). Transmit a copy of such written finding for school districts to the State Allocation Board, in the manner determined by that board, pursuant to

Labor Code section 1771.7, subdivision (d)(2)(A). Transmit a copy of such written finding for community college districts to the Director of DIR, in the manner determined by DIR, pursuant to Labor Code section 1771.7, subdivision (d)(3).

17. Comply with all the requirements of an LCP, when initiated and enforced by the district, pursuant to Labor Code sections 1771.5 or 1771.7 (for works commencing on or after April 1, 2003), Title 8, California Code of Regulations, sections 16425 through 16439, and Chapters 2, 3, and 5 of the Program Guidebook. These requirements include:

    a. Place in all bid invitations and public works contracts appropriate language concerning the requirements of the prevailing wage laws comprising Labor Code sections 1720 through 1861.

    b. Conduct a pre-job conference with the contractor and the subcontractors to discuss federal and state labor requirements applicable to the contract.

    c. Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

    d. Review and, if appropriate, audit payroll records to verify compliance with prevailing wage laws. These investigations shall be conducted by monitoring certified payroll records, investigating complaints from workers, and monitoring agencies and contractors, pursuant to the Program Guidebook, Chapter 4, Parts (A) and (B). Upon conclusion of the audit, prepare audits and findings and obtain the approval of recommended forfeitures from the Labor Commissioner.

    e. Withhold contract payments when payroll records are delinquent or inadequate.

    f. Withhold contract payments equal to the amount of underpayments and applicable penalties when, after investigation, it is established that underpayment has occurred. Withhold contract payments when payroll records are delinquent or inadequate, pursuant to Chapter 3 of the Program Guidebook.

    g. Serve on the contractor, any affected subcontractor, and any bonding company issuing a bond securing the payment of wages, a Notice of Withholding of Contract Payments using the form attached in Appendix 2 of the Program Guidebook.

    h. Mail a notice to DIR on a form titled Notice of Transmittal, found in Appendix 3 of the Program Guidebook, pursuant to Chapter 4 of the Program Guidebook.

    i. When a party requests review, mail a form titled Notice of Opportunity to Review Evidence, found in Appendix 4 of the Program Guidebook, pursuant to Chapter 4 of the Program Guidebook.

18. Provide contractors and subcontractors, bonding companies and sureties with Notice of Withholding of Contract Payments, using the form found in Appendix 2 of the Program Guidebook, when minimum wage law violations are discovered by the district, pursuant to Labor Code section 1771.6 and Title 8, California Code of

Regulations, section 17220. The notice shall be in writing and include the following information:

a. a description of the nature of the violation and basis for the notice;

b. the amount of wages, penalties and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the enforcing agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1, using the form found in Appendix 4 of the Program Guidebook;

c. the name and address of the office to whom a Request for Review may be sent;

d. information on the procedures for obtaining review of an Assessment or a Notice of Withholding of Contract Payments;

e. Notice of Opportunity to request a settlement meeting under Title 8, California Code of Regulations, section 17221; and

f. a statement appearing in bold, or another type face that makes it stand out from other text, to the effect that failure to submit a timely request for review will result in a final order that is binding on the contractor and subcontractor, and on the bonding company.

19. Complete and mail a Notice of Transmittal, as found in Appendix 3 of the Program Guidebook, to the DIR to begin the administrative review process.

20. Defend Notices to Withhold Contract Payments in administrative review proceedings and in court, pursuant to Chapter 4, paragraph iv(d) of the Program Guidebook.

21. Pursuant to Chapter 6 of the Program Guidebook, when investigating worker complaints of underpayment of prevailing wage rates: a) gather supporting documents from all available sources and analyze them for authenticity; and b) conduct a complete certified payroll record and/or project audit. This includes reviewing certified payroll records for errors, inconsistencies, discrepancies, falsification, misclassification, under-reporting, and any other omissions that render the records inaccurate where needed by comparing the inspector of records' daily log with all available records.

22. Pursuant to Chapter 6 of the Program Guidebook, conduct investigations on an as-needed basis by:

a. Calculating back wages and penalties.

b. Reviewing findings with the contractor and any subcontractor.

c. Writing a complete summary of the investigation with a statement of findings and recommended action for submission to DIR's Division f Labor Standards Enforcement for approval of withholdings.

d. Conducting settlement negotiations.

e. Testifying on behalf of the school district in appeal hearings and litigation.

f. Attending pre-bid and job-start meetings and monitoring active construction projects.

g. Interviewing workers to validate complaints.

23. Pursuant to Chapter 9 of the Program Guidebook, conduct audits on a random or as-needed basis, to include comparing certified payroll records to source documents such as front and back copies of canceled checks, time cards, copies of pay check stubs, payroll registers, personnel sign in sheets, daily logs and any other document which authenticates or corroborates that which has been reported.

24. Pursuant to Chapter 9 of the Program Guidebook, prepare cases and documentation to include:

a. Copies of workers' complaints.

b. Copies of all correspondence to the contractor.

c. Certified payroll records.

d. Inspector's daily log.

e. Correct prevailing wage determination and applicable increases.

f. Scope of work for trade classifications used.

g. Tabulation of bids.

h. Notice to proceed.

i. Notice of Completion (if applicable).

j. Surety company information.

k. Contractor's previous record of violations (if applicable).

l. The Notice of Withholding of Contract Payments (if applicable).

m. Release of Notice of Withholding of Contract Payments (if applicable).

n. Memo(s) to file.

25. Pursuant to Section 3.9 of the School Facility Program Substantial Progress and Expenditure Audit Guide ("Audit Guide"), in the event of any postaward audit of a school district by the State Allocation Board, pursuant to Labor Code section 1771.7, subdivision (d)(2)(C), submit a copy of the DIR approved LCP to which the project conformed and a copy of any third party provider contract.

26. Pursuant to Section 3.9 of the Audit Guide, at the time of an OSPC audit, be prepared to submit, upon request, the following:

a. All bid invitations and contracts that must contain language alluding to Labor Code sections 1770 through 1780 compliance and verification.

b. Evidence that a pre-job conference was conducted with the contractor and subcontractor and that the district enforced the requirements as set forth in Labor Code sections 1770 through 1780.

c. Evidence of weekly submittals of certified copies of payrolls for all contractors and subcontractors.

27. Pursuant to Section 3.9 of the Audit Guide, if a district elects to use its own employees for its LCP, provide the following additional information:
    a. The name of the district employee performing the LCP duties.
    b. The salary and benefits of the employee including transportation costs.
    c. A specific breakdown of hours spent by project subject to the LCP requirements.
28. Report any suspected violations of the prevailing wage laws to the Labor Commissioner, pursuant to Labor Code section 1726.
29. Withhold contract payments for underpaid wages and for penalties when, through the district's own investigation, the district determines a violation of prevailing wage laws has occurred, pursuant to Labor Code section 1726.
30. Withhold amounts necessary to satisfy Civil Wage and Penalty Assessments issued by the Labor Commissioner, pursuant to Labor Code section 1727.
31. Retain amounts withheld to satisfy a Civil Wage and Penalty Assessment until receiving a final order no longer subject to judicial review, pursuant to Labor Code section 1727.
32. After July 1, 2001, comply with all due process requirements for the benefit of contractors and subcontractors when amounts are withheld pursuant to a Civil Wage and Penalty Assessment or a Notice of Withholding of Contract Payments, including the providing of proper and timely notices, allowing review of evidence relied upon, appearance and participation at hearings and the appeals therefrom, pursuant to Labor Code section 1742 and Title 8, California Code of Regulations, section 17220.
33. After July 1, 2001, respond to petitions for writs of mandate filed by contractors and subcontractors seeking review of orders of the Labor Commissioner, including the retention of counsel to file timely responses, participating in pre-trial discovery matters, the trial of the cause, pre-trial and post-trial briefing, and the preparation of findings and judgment, pursuant to Labor Code section 1742.
34. Grant and participate in settlement meetings requested by contractors or subcontractors in an attempt to settle any disputed issue before formal hearing procedures, pursuant to Labor Code section 1742.1 and Title 8, California Code of Regulations, section 16413.
35. As a necessary party, appear and participate in legal proceedings resulting from any action against contractor or subcontractor filed by a joint labor-management committee for failure to pay prevailing wages, pursuant to Labor Code section 1771.2.
36. Furnish copies of payroll records of a contractor or subcontractor to a joint labor-management committee, when requested, obliterated only to prevent disclosure of social security numbers, pursuant to Labor Code section 1776.

Claimant stated in the original test claim it is estimated that the district has incurred, or will incur, in excess of $200 in staffing and other costs in excess of revenues annually, for the period from July 1, 2000 through June 2002, to implement the new duties mandated by the state, for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement. In an amendment filed on July 31, 2003, page 7 of the Second Declaration of William McGuire states:

> To the extent that Clovis Unified School District commences a public works project subject to Labor Code Section 1771.7, it is estimated that Clovis Unified School District will incur in excess of $1,000, annually, in staffing and other costs to implement these new duties mandated by the state for which the district will not be reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

In that amendment, an additional declaration was provided by Thomas J. Donner from the Santa Monica Community College District alleging costs mandated by the state.

Claimant filed rebuttal comments to the comments submitted by the Department of Finance, the Department of Industrial Relations, and the Department of General Services, Office of Public School Construction. These rebuttal comments are addressed, as necessary, in the following analysis.

Position of Department of Finance

The Department of Justice filed comments on behalf of the Department of Finance, generally stating that the test claim statutes do not impose a new program or higher level of service on school districts or community college districts since there is no reimbursable mandate for costs of programs or services incurred as a result of the exercise of local discretion, citing *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783. The Department then provides a specific response to each claim; those responses are addressed, as necessary, in the following analysis.

With regard to the test claim amendment addressing Labor Code section 1771.7, the Department states the section does not create a state mandate because districts voluntarily participate in the underlying program, i.e., the construction of schools with state bond money, citing *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 740. Even assuming there was a mandate, the Department points out that the state has provided additional funds for the costs of LCPs, and LCPs also generate revenues and costs savings. The Department argues that the claimant has not shown that it has any costs above these additional funds, revenues and cost savings.

Position of Department of Industrial Relations (DIR)

The DIR states that, since 1975, the state has taken on more of local agencies' historic responsibilities for determining and enforcing prevailing wages to make the prevailing wage duties clearer and less onerous, and leaving behind only minimal recordkeeping tasks. This type of shift from local agencies to the state does not trigger reimbursement under the requirements of article XIII B of the California Constitution. DIR points out that to the extent there has been any expansion in the scope of public works, the consequent obligation to pay prevailing wages directly affects private contractors and only indirectly affects local

governments. DIR then provides specific responses to each claim, which are addressed, as necessary, in the following analysis.

In additional comments, DIR applies the principles of the *Department of Finance v. Commission on State Mandates* case to the test claim, concluding that claimant has not met its burden of showing districts are compelled to participate in the underlying programs, i.e., either engage in construction of school facilities or engage in such projects via contract. DIR further notes that state funding for school construction is already provided through the State Allocation Board, which allocates money to districts based on formulas that pay between 40% to 80% of the cost of construction. DIR argues that the claimant has not made a credible case that such funding does not take care of whatever costs they have incurred.

With regard to the test claim amendment addressing Labor Code section 1771.7, the DIR states that no reimbursement is required because the newly created LCPs are voluntary programs for local school districts, and districts already receive state construction bond funding for their activities from the State Allocation Board. DIR further points out that district LCPs also are allowed to retain any penalties assessed and collected while enforcing the CPWL.

Position of Department of General Services, Office of Public School Construction

The Office of Public School Construction (OSPC), in commenting on the test claim amendment addressing Labor Code section 1771.7, states that participation by a school district in the School Facility Program (SFP), established by Chapter 12.5 of the Education Code, is voluntary:

> The Education Code does not compel a district to obtain funding from the State through the SFP as a condition of building schools. School districts may choose to build facilities through the use of district raised funds. Program elements are only required if a district chooses to participate in the program. Additionally, Labor Code ... Section 1771.7 states "an awarding body that *chooses* to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 ... for a public works project, shall initiate and enforce ... a labor compliance program".[98]

The OSPC further states that the State Allocation Board (SAB) has authority to increase the per pupil grant amount to accommodate the State's share for the additional costs due to the initiation and enforcement of an LCP; the increases were approved by the SAB on July 2, 2003, and are currently being provided.

Interested Person -- State Building and Construction Trades Council of California (AFL-CIO)

The State Building and Construction Trades Council (SBCTC) filed comments on the test claim as an interested person, pursuant to Title 2, California Code of Regulations, section 1181.1, subdivision (*l*). The SBCTC states that the test claim should be denied for the following reasons:

---

[98] Comments from Department of General Services, Office of Public School Construction, Luisa M. Park, Executive Officer, September 15, 2003, page 1.

1. Any "mandate" imposed by the CPWL is on private contractors, not the local agency. It is possible that if private contractors have higher labor costs, such costs might be passed on to their customers; however, the contractor's cost of paying higher wages to workers on a project may well be offset by the increased skill and productivity of those workers. Several recent studies conclude that the prevailing wage law does not actually increase total school construction costs, and the claimant has presented no evidence to the contrary. SBCTC provided a copy of one study: "A Comparison of Public School Construction Costs" by Peter Philips, Ph.D., Professor of Economics, University of Utah, February, 2001.
2. Although the CPWL does impose minor direct costs on school districts to administer and enforce the law, what has occurred since 1975 is the opposite of an unfunded state mandate since the state has taken upon itself responsibilities that were formerly borne by local agencies — i.e., determining prevailing wage rates and enforcing the CPWL.
3. It is correct to state that there has been some expansion in the definition of "public work" since 1975; however, many of the changes to that definition were actually clarifications of the pre-1975 statutory language and claimant has not presented any evidence that these minor changes have had any practical effect on school district construction projects.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[99] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[100] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[101]

A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[102] In

---

[99] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[100] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 735.

[101] *County of San Diego v. State of California* (*County of San Diego*) (1997) 15 Cal.4th 68, 81.

[102] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[103]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[104] To determine if the program is new or imposes a higher level of service, the test claim requirements must be compared with the legal requirements in effect immediately before the enactment of the test claim statutes.[105] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[106]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[107]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[108] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[109]

The analysis addresses the following issues:

- Do the test claim statutes, regulations or alleged executive orders impose a state-mandated program on K-12 school districts or community college districts within the meaning of article XIII B, section 6 of the California Constitution?
- Do the test claim statutes or regulations impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?

---

[103] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[104] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[105] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[106] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877.

[107] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[108] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[109] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (*City of San Jose*).

- Do the test claim statutes or regulations impose costs mandated by the state within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution?

Issue 1: Do the test claim statutes, regulations or alleged executive orders impose a state-mandated program on K-12 school districts or community college districts within the meaning of article XIII B, section 6 of the California Constitution?

For the test claim statutes, regulations or alleged executive orders to impose a state-mandated program, the language must order or command a school district or community college district to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered. Moreover, where program requirements are only invoked after the district has made an underlying discretionary decision causing the requirements to apply, or where participation in the underlying program is voluntary, courts have held that resulting new requirements do not constitute a reimbursable state mandate.[110] Stated another way, a reimbursable state mandate is created when the test claim statutes or regulations establish conditions under which the state, rather than a local entity, has made the decision requiring the district to incur the costs of the new program.[111]

The claimant asserts the test claim statutes, regulations and alleged executive orders require districts to perform new activities to comply with state prevailing wage requirements, the costs of which are reimbursable under article XIII B, section 6. Since the provisions of the CPWL are only applicable to public works projects performed under contract, and not to work carried out by a public agency with its own forces,[112] the analysis must first address whether the state is requiring a school district or community college district to engage in any public works projects or to contract out for such projects. Then, the alleged new activities must be analyzed to determine whether they are required or mandated by the plain language of the test claim statutes, regulations, or alleged executive orders.

Do Districts Have Discretion to Undertake Public Works Projects?

Types of Public Works Projects Subject to CPWL

The Labor Code sets forth the types of projects that are considered "public works," subject to the CPWL. Prior to 1975, public works projects subject to prevailing wages generally included: 1) construction; 2) alteration; 3) demolition; 4) repair work; 5) work done for irrigation, utility, reclamation and improvement districts; 6) street, sewer or other improvement work; 7) laying of carpet; and 8) maintenance work.[113] Since 1975, the test claim statutes added new types of public works projects:

- Labor Code section 1720 was modified to add:

---

[110] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Kern High School Dist., supra,* 30 Cal.4th 727, 727.

[111] *San Diego Unified School Dist., supra* (2004) 33 Cal.4th 859, 880.

[112] Labor Code section 1771.

[113] Labor Code sections 1720 and 1771 in effect as of January 1, 1975.

- public transportation demonstration projects (effective August 7, 1989);
- design and preconstruction, including land surveying (effective January 1, 2001); and
- installation projects (effective January 1, 2002).

- Effective January 1, 1981, Labor Code section 1720.2 was amended to include projects done under private contract where the property subject to the contract is privately owned but upon completion of the construction work more than 50 percent of the property is leased to the state or a political subdivision for its use *and* the construction work is performed according to plans or specifications furnished by the state or a political subdivision with a lease agreement that is entered into between a lessor and the state or political subdivision as lessee during or upon completion of the project.
- Effective January 1, 2000, Labor Code section 1720.3 was amended to state that contracts for the removal of refuse from a public works construction site entered into by "any political subdivision" – which includes K-12 school districts and community college districts – are public works projects.

Each of these new types of public works projects is now subject to the CPWL.[114] The timing for CPWL coverage is significant here for purposes of the mandates analysis. The pre-existing public works projects were already subject to the pre-existing CPWL administrative requirements, while the new public works projects only became subject to and therefore triggered the pre-existing requirements at the time they were enacted.[115] Thus, for pre-existing public works projects, only the *newly-imposed* CPWL administrative requirements that are claimed could be subject to reimbursement. For *newly-covered* public works projects, however, all CPWL administrative requirements *that are claimed*, both pre-existing and new, could be subject to reimbursement.

Discretion to Undertake Public Works Projects

The foregoing provisions show that the CPWL covers a broad range of public works projects. The decision to undertake such projects could arise in a myriad of ways, from a district-level decision to an initiative enacted by the voters.

With regard to K-12 school districts, Education Code section 17593 requires those districts to keep schools in repair:

> The clerk of each district except a district governed by a city or city and county board of education shall, under the direction of the governing board, keep the schoolhouses in repair during the time school is taught therein, and exercise a general care and supervision over the school premises and property during the vacations of the school.

---

[114] Labor Code section 1771: "... not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed ... shall be paid to all workers employed on public works."

[115] See footnote 97 regarding effective date for CPWL coverage of design and pre-construction, including land surveying.

Moreover, Education Code section 17565 requires the governing board of any school district to "furnish, repair, insure against fire, and in its discretion rent the school property of its districts."

Education Code section 17002 defines "good repair" to mean:

> [T]he facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards for which the facility was designed and constructed.

With regard to community college districts, Education Code section 81601 states:

> The governing board of a community college district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. ...

Thus, both K-12 school districts and community college districts are required by statute to repair the school property of their districts. Since "property" includes "any external thing over which the rights of possession, use, and enjoyment are exercised,"[116] the requirement to repair includes real property as well as facilities owned by the district. Moreover, because the term "repair" is defined as "to restore to sound condition after damage or injury" and "to renew or refresh,"[117] staff finds that "repair" includes "maintenance" for purposes of these provisions.

These statutes, therefore, constitute legal compulsion for K-12 school districts and community college districts to repair and maintain their facilities and property.

Aside from the above statutory requirements, however, there is no evidence in the test claim statutes, regulations, alleged executive orders, or in the record that the state has legally compelled districts to undertake other public works projects that *do not* involve repair or maintenance, including the newly-covered public works projects. In fact, with regard to new construction of school buildings, the Second District Court of Appeal has stated: "Where, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine."[118]

Absent such legal compulsion, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern,* the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.[119]

---

[116] Black's Law Dictionary, Seventh Edition, 1999, page 1232, column 2.

[117] Webster's II, New Collegiate Dictionary, 1999, page 939, column 2.

[118] *People v. Oken, supra,* 159 Cal.App.2d 456, 460.

[119] *Kern High School Dist., supra,* 30 Cal.4th 727, 754.

In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.[120] The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[121] Regarding expulsion recommendations that were discretionary on the part of the district, the court stated that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.[122] Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.[123]

There is no evidence in the record to indicate that failure to undertake public works projects that are not otherwise legally compelled would result in certain and severe penalties such as double taxation or other draconian consequences as set out in the *Kern* case. Nor does the record show that the circumstances here are similar to those faced by the *San Diego* court regarding school safety. Although school safety was mentioned in the context of the statutory repair and maintenance requirements, nothing in the record indicates that failure to undertake *other* public works projects that are not required in statute would result in unsafe schools.

Instead, staff finds that public works projects that are entered into for purposes other than repair and maintenance are discretionary, analogous to the situation in *City of Merced.* There, the issue before the court was whether reimbursement was required for new statutory costs imposed on the local agency to pay a property owner for loss of goodwill, when a local agency exercised the power of eminent domain.[124] The court stated:

> Whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.[125]

The Supreme Court in *Kern High School District* reaffirmed the *City of Merced* rule in applying it to voluntary education-related funded programs:

> The truer analogy between [*Merced*] and the present case is this: In *City of Merced*, the city was under no legal compulsion to resort to eminent domain – but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a

---

[120] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 866.

[121] *Id.* at pages 881-882.

[122] *Id.* at page 887, footnote 22.

[123] *Id.* at page 888.

[124] *City of Merced, supra,* (1984) 153 Cal.App.3d 777, 777.

[125] *Id.* at 783.

> reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[126]

The Code of Civil Procedure provision that was cited in *City of Merced* states:

> Nothing in this title requires that the power of eminent domain be exercised to acquire property necessary for public use. Whether property necessary for public use is to be acquired by purchase or other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property.[127]

The Law Revision Commission's comment on this provision stated:

> Section 1230.030 makes clear that whether property is to be acquired by purchase or other means, or by exercise of the power of eminent domain, is a discretionary decision. Nothing in this title requires that the power of eminent domain be exercised; but, if the decision is that the power of eminent domain is to be used to acquire property for public use, the provisions of this title apply except as otherwise specifically provided by statute. ...[128]

The holding in *City of Merced* applies in this instance. A K-12 school district's or community college district's decision to undertake a public works project, other than for repair or maintenance of school buildings and property, is analogous to the discretionary decision to acquire property via eminent domain, and there is no evidence in the law or in the record that districts are practically compelled to engage in such public works projects.

Therefore, staff finds that the state has required K-12 school districts and community college districts to undertake public works projects to repair or maintain facilities and property of K-12 school districts and community college districts. The state has *not* required these districts to undertake any other public works projects. Consequently, any prevailing wage requirements, *when triggered by a public works project that does not address repair or maintenance*, are not mandated by the state and are not subject to article XIII B, section 6.

Moreover, since repair and maintenance types of public works projects were covered by the CPWL prior to 1975, only those CPWL administrative requirements claimed that were imposed *on or after January 1, 1975*, could be subject to reimbursement.

---

[126] *Kern High School District, supra,* 30 Cal.4th 727, 743.

[127] Code of Civil Procedure section 1230.030.

[128] California Law Revision Commission comment, 19 West's Annotated Code of Civil Procedure (1982 ed.) following section 1230.030, p. 414.

Do Districts Have Discretion to Contract Out for Repair or Maintenance Public Works Projects?

Since the requirement to pay prevailing wages is limited to work performed under contract, the next question is whether the state requires K-12 school districts or community college districts to contract out for public works projects for repair or maintenance of school facilities or property, or whether the district can use its own forces for the project. As more fully described below, staff finds there are some circumstances under which K-12 school districts and community college districts cannot use their own forces and are required to contract out for maintenance and repair public works projects.

The Public Contract Code governs when districts are required to contract out, and sets forth various definitions for projects that encompass repair and maintenance public works projects. Section 22002, subdivision (c), defines "public project" as:

> (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and *repair* work involving any publicly owned, leased, or operated facility.[129]
> (2) Painting or repainting of any publicly owned, lease, or operated facility.
> (3) In the case of a publicly owned utility system, "public project" shall include only construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher. (Emphasis added.)

Subdivision (d) of section 22002 states that "public project" does not include "maintenance work" which includes all of the following:

> (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
> (2) Minor repainting.
> (3) Resurfacing of streets and highways at less than one inch.
> (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
> (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

Thus, "public project" for purposes of the Public Contract Code is generally characterized as construction work on public property. Public projects are clearly distinguished from "maintenance."

The Public Contract Code generally requires school districts and community college districts to contract out with the lowest responsible bidder for construction, repairs and maintenance.[130]

---

[129] Public Contract Code section 22002, subdivision (e), defines "facility" as "any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c), real property, streets and highways, or other public work improvement.

[130] Public Contract Code sections 20111 and 20651.

There are exceptions, however. For instance, when emergency repairs are needed for any facility to permit the continuance of existing classes or to avoid danger to life or property, the governing board of a school district or community college district is allowed to use its own forces to make such repairs.[131] In addition, the governing board of a school district or community college district is allowed to use its own forces to make repairs and other improvements under certain "work limits." For K-12 school districts, Public Contract Code section 20114 provides the following work limits:

> (a) In each school district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20115[132, 133] by day labor, or by force account, whenever the total number of hours on the job

---

[131] Public Contract Code sections 20113 and 20654.

[132] Public Contract Code section 20115 defines "maintenance" in this instance as "routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purpose in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired." This includes, but is not limited to: "carpentry, electrical, plumbing, glazing, and other craftwork designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures." These provisions express the Legislature's intent that maintenance does not include painting, repainting, or decorating other than touchup, but instead those activities are to be controlled directly by the work limits under section 20114.

[133] For purposes of the Labor Code, "maintenance" is similarly defined:

> (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.
> (2) Carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continually usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.
> EXCEPTION: 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.
> EXCEPTION: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.
> (3) Landscape maintenance. See Public Contract Code Section 21002 [subsequently renumbered to section 22002].
> EXCEPTION: Landscape maintenance work by "sheltered workshops" is excluded. (Title 8, Cal. Code Regs., tit. 8, § 16000.)

does not exceed 350 hours. Moreover, in any school district having an average daily attendance of 35,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20115, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of material does not exceed twenty-one thousand dollars ($21,000).
(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

For community college districts, Public Contract Code section 20655 provides the following work limits:

> (a) In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20656[134] by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any district whose number of full-time equivalent students is 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20656, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of materials does not exceed twenty-one thousand dollars ($21,000).
> (b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

Notwithstanding the above provisions, the limits can be *increased* for public projects when a K-12 school district or community college district operates under the Uniform Public Construction Cost Accounting Act (UPCCAA).[135] The UPCCAA provides that public projects, which exclude maintenance, of $30,000 or less may be performed by a school district or community college district by its own forces.[136] Thus, for those districts subject to the UPCCAA, when the project is not an emergency as set forth in sections 20113 or 20654, contracting out is only required for a public project, as defined, when the cost of such project will exceed $30,000.

---

[134] Public Contract Code section 20656 defines "maintenance" for this purpose in the same manner as Public Contract Code section 20115. Section 20656 expresses the Legislature's intent that maintenance does not include painting, repainting, or decorating other than touchup, but instead those activities are to be controlled directly by the work limits under section 20655.

[135] Public Contract Code sections 22000 et seq.

[136] Public Contract Code section 22032; prior to January 1, 2007, the dollar limit for public projects that could be performed by the district was $25,000.

In summary, school districts and community college districts are required by state statute to contract out for repairs or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113; and
    a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
    b. for districts with an average daily attendance of 35,000 or greater, when the total number of hours on the job exceeds 750, or the material cost exceeds $21,000.
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
    a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
    b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds $21,000.
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a public project, as defined, is not an emergency as set forth in Public Contract Code section 20113 or 20654, and the project cost will exceed $30,000.

Staff finds these requirements constitute legal compulsion since the state, through the Education Code and Public Contract Code, requires K-12 school districts and community college districts to undertake public works projects to repair or maintain their facilities and property via contract under the circumstances specified above.

Thus, repair or maintenance public works projects, when contracted for under the circumstances set forth above, are not discretionary. Moreover, since repair and maintenance public works projects were covered by the CPWL prior to 1975, only those CPWL administrative requirements claimed, that were imposed *on or after January 1, 1975*, could be subject to reimbursement.

Do the Test Claim Statutes, Regulations and Alleged Executive Orders Mandate Any Activities When a District is Required to Contract Out for Repairs or Maintenance of School Buildings or Property?

The next question is whether the plain language of the test claim statutes, regulations or alleged executive orders, on or after January 1, 1975, mandates any activities on K-12 school districts or community college districts when a district is required by law to contract out for repair or maintenance public works projects.

A. Determining Prevailing Wage Coverage and Rates

1. Obtain Correct Prevailing Wage Rates – Labor Code Section 1773 and Title 8, California Code of Regulations, Sections 16202 and 16204

Labor Code section 1773 states in relevant part:

> The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations.

Section 16202 of the regulations states in relevant part:

> (a) Awarding body request. The awarding body shall request the Director to make a determination for a particular craft, classification or type of worker not covered by a general determination. Any such request shall be submitted at least 45 days prior to the bid advertisement date.

Section 16204 of the regulations, dealing with effective dates of rate determinations and rates, states in relevant part:

> (a)(5) It shall be the responsibility of the awarding body to ensure that the correct determination is used.

The plain language of this regulation requires the awarding body to "ensure" that the correct determination is used. This provision does not impose the activity of ensuring that the Director of Industrial Relations made a correct determination, as claimant asserts; rather it imposes the activity of ensuring that the appropriate wage rates, as determined by Director of Industrial Relations and as obtained by the awarding body, are properly used in the contract.

Thus, the plain language of the statute and regulations cited require the awarding body to obtain both the general prevailing wage rate and any special rates from the Director of Industrial Relations, and ensure that the appropriate rates are used in the contract.

2. Coverage Determinations – Title 8, California Code of Regulations, Section 16001

Section 16001 of the regulations states in relevant part:

> (a)(1) Any interested party ... *may* file with the Director of Industrial Relations ... a request to determine coverage under the prevailing wage laws regarding either a specific project or type of work to be performed which that interested party believes may be subject to or excluded from coverage as a public works under the Labor Code. ...
>
> (2) Within 15 days of receipt of a copy of the request for a coverage determination, the awarding body shall forward to the Director ... any documents, arguments, or authorities it *wishes* to have considered in the coverage determination process. (Emphasis added.)

Thus, the plain language of this provision shows that an awarding body may, but is not required to, request a coverage determination from the Director of Industrial Relations. The

awarding body must provide documentation to the Director by a date certain if it *wishes* to have that documentation considered. Thus, no activities are required of the awarding body by this regulation.

3. Review of Prevailing Wage Rate Determination – Title 8, California Code of Regulations, Section 16302

Section 16302 of the regulations provides that an interested party, including an awarding body, "*may* file with the Director or the Chief of DLSR, within 20 days after commencement of advertising of a call for bids by any awarding body, a petition to review a determination of any rate or rates made by the Director ..." (Emphasis added.) Thus, the awarding body is not required to file such a petition, and no activities are required.

4. Appeal of Public Work Coverage Determination – Labor Code Section 1773.4 and Title 8, California Code of Regulations, Section 16002.5

Section 16002.5 of the regulations, as it interprets Labor Code section 1773.4, provides that an interested party, including an awarding body, "*may* appeal to the Director of Industrial Relations ... a determination of coverage under the public works laws ... regarding either a specific project or type of work ..." (Emphasis added.) Thus, the awarding body is not required to make such appeal, and no activities are required.

B. Notices and Reports

1. Statement of Prevailing Wage Rates – Labor Code Section 1773.2

Labor Code section 1773.2 states:

> The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.
>
> In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

Labor Code section 1773.2 does impose on the awarding body the activity of providing notice, in either of the fashions set forth.

2. Ineligible Contractors and Subcontractors – Labor Code Section 1777.1 and Title 8, California Code of Regulations, Sections 16800 through 16802.

Labor Code section 1777.1, subdivision (d), requires the Labor Commissioner, not less than semi-annually, to "publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project ..." Sections 16800 through 16802 set forth

procedures for the Division of Labor Standards Enforcement to investigate and conduct hearings for debarment of contractors and subcontractors.

The plain language of the test claim statute and regulations does not impose any activities on the awarding body.

3. Notice Regarding Apprenticeship Standards – Labor Code Sections 1773.3 and 1777.5, Subdivision (n)

Labor Code section 1773.3 states:

> An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. ... Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

Section 1777.5 sets apprenticeship standards. Subdivision (n) states:

> The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

The plain language of the test claim statute requires the awarding body, when apprentices will be used in the contract, to include language in the contract regarding apprenticeship requirements and provide a copy of the contract award to the Division of Apprenticeship Standards.

4. Take Cognizance of and Report Suspected Violations — Labor Code Section 1726

Labor Code section 1726 states in relevant part:

> The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

Thus, the plain language of this test claim statute requires the awarding body to take cognizance of and report any suspected violations to the Labor Commissioner.

D. Payroll Records – Labor Code Section 1776 and Title 8, California Code of Regulations, Sections 16400 - 16403

Labor Code section 1776 states in relevant part:

> (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public

work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury ...

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) *shall* be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

...

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement *shall* be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal labor Management Cooperation Act of 1978 ... *shall* be marked or obliterated only to prevent disclosure of an individual's social security number. ...

...

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof,

for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties *shall* be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract *shall* cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act ... and the Information Practices Act of 1977 ... governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section. (Emphasis added.)

Section 16400 of the regulations states in relevant part:

(c) Acknowledgment of Request. The public entity receiving a request for payroll records *shall* acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400(d) below, to the person who requested said records.

(d) Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:

(1) Specify the records to be provided and the form upon which the information is to be provided;

(2) Conspicuous notice of the following:

(A) that the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and

(B) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five ($25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;

(3) Cost of preparation as provided in Section 16402; and

(4) Provide for inspection.

(e) Inspection of Payroll Records. Inspection of the original payroll records at the office of the contractor(s) pursuant to subdivision (b) of

> Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice. (Emphasis added.)

Section 16401 provides that the format for reporting payroll records by the contractor shall be on a form provided by the public entity and that copies of such forms are available at any office of the Division of Labor Standards Enforcement throughout the state. The section also provides specified words for the required certification, but allows the public entity to require a more strict or extensive form of certification.

Section 16402 of the regulations states:

> The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be $1 for the first page of the payroll record and 25 cents for each page thereafter, plus $10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.

Section 16403 of the regulations states:

> (a) Records received from the employing contractor *shall* be kept on file in the office or entity that processed the request for at least 6 months following completion and acceptance of the project. Thereafter, they may be destroyed unless administrative, judicial or other pending litigation, including arbitration, mediation or other methods of dispute resolution, are in process. Copies on file shall not be obliterated in the manner prescribed in subdivision (b) below;
>
> (b) copies provided to the public upon written request *shall* be marked, obliterated or provided in such a manner that the name, address and Social Security number, and other private information pertaining to each employee cannot be identified. All other information including identification of the contractor shall not be obliterated;
>
> (c) the public entity may affirm or deny that a person(s) was or is employed on a public works contract (by a specific contractor) when asked, so long as the entity requires such information of an identifying nature which will reasonably preclude release of private or confidential information. (Emphasis added.)

In summary, requests by the public for certified payroll records can only be made through the awarding body, Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards, and any copies provided to the public shall be redacted to prevent disclosure of an individual's name, address, social security number and other private information. Once the awarding body receives a request for the records from the public, the awarding body is required to send an acknowledgment to the requesting party and indicate to the requestor the costs for preparing the records. The awarding body's request to the contractor for the records must include specified information. The requesting party is required to reimburse the costs of preparing the records by the contractor, subcontractors, and the awarding body or other entity through which the request was made; the regulation establishes those costs, and requires that

payment be made by the person seeking the record prior to release of the documents to cover the actual costs of preparation. The regulations further require that the awarding body keep unredacted copies of any such payroll records on file for at least 6 months following completion and acceptance of the project, or longer if the project is disputed. Upon request of the Division of Apprenticeship Standards or the Division of Labor Standards, the awarding body is required to withhold from contractor progress payments any penalties for the contractor's noncompliance. The body awarding the contract is also required to include in the contract stipulations regarding the contractor's requirements regarding payroll records.

With regard to providing certified payroll records to a joint labor-management committee under Labor Code section 1776, subdivision (e), it is unclear from the plain language of the statute whether such records must be provided by the awarding body or if such records may be provided by the contractor, since subdivision (b)(3) states: "The public shall not be given access to the records at the principal office of the contractor."

In interpreting statutes, the primary rule is to ascertain the intent of the Legislature so as to effectuate the purpose of the statute.[137] The first step is to examine the statutory language, giving the words their usual and ordinary meaning.[138] If there is ambiguity, extrinsic sources including legislative history may be used so that the general purpose of the statute is promoted rather than defeated.[139]

In this case, the Legislature enacted statutes to allow a joint labor-management committee the ability to independently enforce prevailing wage requirements under Labor Code section 1771.2.[140] As part of that enactment, section 1776 was modified to address certified payroll records released to a joint labor-management committee. The Senate Rules Committee bill analysis stated:

> This bill provides that a federally recognized joint labor-management committee may obtain a copy of a certified payroll from a *contractor* on a public works project, but with names and social security numbers deleted. If the committee discovers unpaid prevailing wages or fringe benefits due, and related penalties, it may file a civil action to collect them. ...[141] (Emphasis added.)

Thus it is clear from the legislative history that the provisions were intended to allow the joint labor-management committee to obtain certified payroll records directly from the contractor rather than the awarding body.

---

[137] *Estate of Griswold* (2001) 25 Cal 4th 904, 910.

[138] *Id.* at 911.

[139] *Ibid.*

[140] Statutes 2001, chapter 804.

[141] Senate Rules Committee, Office of Senate Floor Analyses, SB 588 Bill Analysis, September 12, 2001, page 2.

Therefore, the test claim statutes and regulations require awarding bodies to perform the following activities:

- Upon a request made to the awarding body by the public for payroll records:
  - send an acknowledgment to the requestor including the costs to be paid for preparing the records (Cal. Code Regs., tit. 8, § 16400, subd. (c));
  - obtain certified payroll records from the contractor, including specified information in the request (Cal. Code Regs., tit. 8, § 16400, subd. (d));
  - mark or obliterate the records to prevent disclosure of an individual's private information (Lab. Code, § 1776, subd. (e), Cal. Code Regs., tit. 8, § 16403, subd. (b));
  - provide copies of the records to the requestor (Lab. Code, § 1776, subd. (b)(3)); and
  - retain copies of the records for at least 6 months (Cal. Code Regs., tit. 8, § 16403, subd. (a)).
- Withhold penalties from contractor progress payments for noncompliance with section 1776, upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g).)
- Insert in the contract stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776. (Lab. Code, § 1776, subd. (h).)

E. Withholdings

1. Withhold Contract Payments Based on District Determination – Labor Code Section 1726

Labor Code section 1726 states in relevant part that "if the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed." The plain language of this statute does not require the awarding body to engage in the activity of investigating a potential violation of the chapter.

2. Withhold and Retain Contract Payments to Satisfy Civil Wage and Penalty Assessments – Labor Code Section 1727

Labor Code section 1727 states:

> (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.
>
> (b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor

under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed until receipt of a final order that is no longer subject to judicial review.

Thus, the plain language of the statute requires the awarding body to withhold from contractor payments the amount necessary to satisfy a civil wage and penalty assessment issued by the Labor Commissioner, or receive from the contractor any money withheld for such purpose by the contractor from the subcontractor. However, where the plain language of the test claim statute *prohibits* the awarding body from disbursing the withheld money until a final order that is no longer subject to judicial review, no activities are required of the awarding body.

3. Release Withheld Funds – Labor Code Section 1742, Subdivision (f)

Labor Code section 1742, subdivision (f), states in relevant part that "[a]n awarding body that has withheld funds in response to a civil wage and penalty assessment ... shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds ... to the Labor Commissioner."

The plain language of this statute requires the activity of releasing funds to the Labor Commissioner upon receipt of the final order.

F. Labor Compliance Program

Claimant pled several activities required of districts when they implement a Labor Compliance Program pursuant to Labor Code section 1771.5.[142] Ordinarily, the prevailing wage requirements are applicable for every public works project that exceeds $1,000.[143] Section 1771.5 states in pertinent part that if an awarding body *elects* to initiate and enforce a Labor Compliance Program, the awarding body can avoid prevailing wage requirements for public works projects of up to $25,000 for construction work or up to $15,000 for alteration, demolition, repair or maintenance work. Section 1771.7 further provides that an awarding body that *chooses* to use funds derived from the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 *shall* initiate and enforce a Labor Compliance Program. Nothing in the plain language of section 1771.5 *requires* the awarding body to elect to initiate or enforce, and therefore undertake any activities related to, a Labor Compliance Program, nor does the plain language of sections 1771.5 or 1771.7 *require* the awarding body to use funds derived from the referenced bond measures. Staff therefore finds there is no "legal" compulsion for K-12 school districts or community colleges to initiate and enforce a Labor Compliance Program.

Absent such legal compulsion, the courts have ruled at times that "practical" compulsion might be found. As noted above, the Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern,* the court

---

[142] With regard to initiating and enforcing a Labor Compliance Program, claimant pled Labor Code sections 1771.5, 1771.6 and 1771.7, Title 8, California Code of Regulations sections 16425 – 16439 and 17220 – 17221, "AB 1506 Labor Compliance Program Guidebook," "School Facility Program Substantial Progress and Expenditure Audit Guide," and "Antioch Unified School District Labor Compliance Program."

[143] Labor Code section 1771.

determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.[144]

The Department of General Services, Office of Public School Construction, asserts that the law does not compel a district to obtain funding from the state as a condition of building schools, and school districts may choose to build facilities through the use of district raised funds. Claimant argues that the use of *district* raised funds is not realistic, citing several Education Code provisions which "strictly limit" the district's ability to issue local school bonds and manifest the Legislature's intent that the state should provide financing for school construction. Claimant summarized the argument as follows:

> In summary, the last 60 years of legislative history shows repeated and consistent recognition that school districts are unable to meet the school construction needs of their pupils. The history repeatedly reveals an admission that the education of school children is the primary responsibility of the state. The history of the inability of school districts and the obligation of the state to educate children results in the above recited litany of state money for school construction at low or no interest rates, repayment requirements of less than the amounts apportioned, and repayment terms unavailable anywhere else. Education of children is an obligation and function of the state. Classrooms are required to provide that education. Therefore, building classrooms is a state obligation.[145]

In the foregoing analysis regarding public works projects, however, staff found that the only public works projects mandated by the state are projects the districts undertake for repair and maintenance. Since no compulsion to undertake other types of public works projects was found, the only issue here is whether K-12 school districts and community college districts are compelled to use Kindergarten-University Public Education Facilities Bond Act of 2002 and 2004 funds for repair and maintenance projects, thereby triggering the requirement for the district to implement an LCP. For the reasons stated below, staff finds no such compulsion exists under the test claim statutes, regulations, or alleged executive orders, or under other law or in the record.

Claimant argues that requiring the district to use district-raised funds rather than state funds "results in non-legal compulsion in the form of double taxation which is prohibited by *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70-76."[146] That California Supreme Court case dealt with a claim seeking subvention of costs imposed as a result of a state statute which extended federally-mandated coverage of the state's unemployment insurance law to include state and local agencies.[147] The court noted that federal law provides powerful incentives to enactment of unemployment insurance protection by the individual states, i.e., "certified" state programs, and described the current situation as follows:

---

[144] *Kern High School Dist., supra,* 30 Cal.4th 727, 754.

[145] Claimant comments, submitted October 20, 2003, page 10.

[146] *Ibid.*

[147] *City of Sacramento v. State of California, supra,* 50 Cal.3d 51, 51.

> In current form, the Federal Unemployment Tax Act (hereafter FUTA) ... assesses an annual tax upon the gross wages paid by covered private employers nationwide. The tax rate, which has varied over the years, stands at 6.2 percent for calendar year 1990. (Citations omitted.) However, employers in a state with a federally "certified" unemployment insurance program may credit their contributions to the state system against up to 90 percent of the federal tax. ... A "certified" state program also qualifies for federal administrative funds. (Citations omitted.)[148]

One of the questions before the court was whether the new state law, because of the federal incentives for enacting it, was in fact a "federal" mandate.[149] The court ruled that the state statute in question was actually a federal mandate; since the statute was not subject to the tax and spend limitations of articles XIII A and B, the local agency could tax and spend as necessary to meet expenses of the new legislation.[150] The court reasoned that "certain regulatory standards imposed by the federal government under 'cooperative federalism' schemes are coercive on the states and localities in every practical sense,"[151] and provided the following explanation:

> If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty – full, double unemployment taxation by both state and federal governments. Besides constituting an intolerable expense against the state's economy on its face, this double taxation would place California employers at a serious competitive disadvantage against their counterparts in states which remained in federal compliance.
>
> ...
>
> Here, the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses. The alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards. We therefore conclude that the state acted in response to a federal "mandate" for purposes of article XIII B.[152]

Claimant points out that in November of 2002 the voters approved Proposition 47, the Kindergarten-University Public Education Facilities Bond Act of 2002, which allocated more than $8 billion for new construction and more than $3 billion for the modernization of school facilities, which is a state general obligation bond measure to be repaid by taxation levied on all residents of the state, including school district constituents.[153] In response to Department of

---

[148] *Id.* at 58.

[149] *Id.* at 70.

[150] *Id.* at 76.

[151] *Id.* at 73-74.

[152] *Id.* at 74.

[153] Claimant comments, submitted October 20, 2003, page 14.

General Services' suggestion that a school district has the discretion to build new facilities through the use of district raised funds, claimant argues that any district raised funds "would need to be repaid from taxes raised only from the constituents of that school district."[154] Claimant further argues that since any election to use district funds does not relieve the residents of that district from still paying taxes to reduce the state bonds, the citizens of the district would then be subject to "double taxation."[155] Claimant concludes that the "only reasonable alternative to school districts is to use available Proposition 47 state funds and to enforce a labor compliance program."[156]

Staff disagrees that using local general obligation bonds constitutes the "intolerable expense" of "double taxation" as described by the Supreme Court in *City of Sacramento*, or that school districts have no reasonable alternative to using funds available from Proposition 47 (2002 Kindergarten-University measure) or Proposition 55 (2004 Kindergarten-University measure). In fact, the ballot measure that enacted Proposition 47 states that, in addition to funding from state and local general obligation bonds, school districts also receive significant funds from developer fees and special local bonds known as "Mello-Roos" bonds.[157] The School Facility Program Handbook, which provides assistance to districts in applying for and obtaining these bond funds, notes that additional sources of funds for districts include, in addition to general obligation bonds, proceeds from the sale of surplus property and federal grants.[158] Under the Deferred Maintenance Program, K-12 school districts and community college districts can receive state matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components so that the educational process may safely continue.[159] None of these additional sources of funds triggers the requirement to initiate and establish an LCP.

Moreover, the purposes for the 2002 and 2004 bond measures, as stated in the ballot materials, were to provide funds for K-12 school districts to buy land, construct new buildings, reconstruct or modernize existing buildings, provide relief for critically overcrowded schools, and construct buildings for joint use; and for community college districts, the funds were intended to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings.[160]

---

[154] *Ibid.*

[155] *Ibid.*

[156] *Ibid.*

[157] Official Voter Information Guide, General Election Tuesday, November 5, 2002, Proposition 47, Analysis by the Legislative Analyst, page 1.

[158] School Facility Program Handbook, A guide to assist with applying for and obtaining grant funds, prepared by the Office of Public School Construction, July 2007, page 12.

[159] Education Code sections 17582 – 17588 and 84660 et seq.; Deferred Maintenance Program Handbook, A guide to assist school districts in applying for and obtaining "grant" funds for the purposes of performing deferred maintenance work on school facilities, prepared by the Office of Public School Construction, June 2007, page 1.

[160] Official Voter Information Guide, General Election, Tuesday, November 5, 2002, Proposition 47, Analysis by the Legislative Analyst, page 2; Official Voter Information Guide,

Thus, although some of the 2002 and 2004 bond funds will likely be used for repairs, that was not their primary purpose. Furthermore, as noted above, K-12 school districts and community college districts have several funding alternatives to accomplish repair and maintenance. The Supreme Court in *Kern* stated that school districts, in the exercise of their discretion, will make the choices that are ultimately the most beneficial for the district:

> As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the [new] requirements or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)[161]

Therefore, staff finds there is no evidence in the record or in law to demonstrate that districts are legally or practically compelled to use Kindergarten-University Public Education Facilities Bond Act of 2002 or 2004 funds to undertake repair or maintenance public works projects. Since none of the activities that flow from implementation of an LCP pursuant to the test claim statutes, regulations or alleged executive orders[162] have been triggered by a state-mandated requirement, none of those statutes, regulations or alleged executive orders are subject to article XIII B, section 6.

G. Hearings and Court Proceedings

Claimant pled several activities related to a new administrative hearing process pursuant to Labor Code sections 1742 and 1742.1 and Title 8, California Code of Regulations, sections 16413 and 17220, et seq. This new process was established for contractors and subcontractors to obtain review of civil wage and penalty assessments issued by the Labor Commissioner, or decisions of the awarding body to withhold contract payments when enforcing under a Labor Compliance Program pursuant to Labor Code section 1771.5, or under Labor Code section 1726.

Labor Code section 1742 states in relevant part:

> (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the

---

California Primary Election, Tuesday, March 2, 2004, Proposition 55, Analysis by the Legislative Analyst, page 6.

[161] *Kern High School Dist., supra,* 30 Cal. 4th 727, 753.

[162] Labor Code sections 1771.5, 1771.6 and 1771.7, Title 8, California Code of Regulations sections 16425 – 16439 and 17220 – 17221, "AB 1506 Labor Compliance Program Guidebook," "School Facility Program Substantial Progress and Expenditure Audit Guide," and "Antioch Unified School District Labor Compliance Program."

assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b)(1) Upon receipt of a timely request, a hearing shall be commenced within 90 days before an administrative law judge ... The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

(2) The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

(3) Within 45 days of the conclusion of the hearing, the administrative law judge shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the administrative law judge shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the administrative law judge may reconsider or modify the decision to correct an error except that a clerical error may be corrected at any time.

(4) The Director of Industrial Relations shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the administrative law judge by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be

given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

...

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

...

Section 16413 of the regulations further establishes procedures for a contractor or subcontractor to follow when requesting a hearing under Labor Code section 1742.

Labor Code section 1742.1 requires the Labor Commissioner to afford the affected contractor or subcontractor, upon his or her request, to meet with the Labor Commissioner to attempt to settle the dispute without the need for formal proceedings. The section further states in relevant part:

> The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6 [i.e., under a Labor Compliance Program], afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. ...

Sections 17220 et seq. of the regulations set forth procedures for an awarding body to follow when enforcing under a Labor Compliance Program pursuant to Labor Code section 1771.6.

The plain language of Labor Code sections 1742 and 1742.1, and the regulations cited, does not require awarding bodies to engage in any hearing activities, respond to writs of mandate, or participate in settlement meetings, unless the awarding body is voluntarily exercising enforcement authority under Labor Code section 1726 or 1771.5.[163] As noted above, Labor Code section 1726 *does not* require an awarding body to investigate potential violations of the chapter, nor does Labor Code section 1771.5 require an awarding body to initiate and enforce a Labor Compliance Program. Since both of these underlying activities are discretionary, Labor Code sections 1742 and 1742.1, and sections 16413 and 17220 et seq. of the regulations, do not mandate any activities on the awarding body.

Labor Code section 1771.2 allows a joint labor-management committee, established pursuant to federal law, to bring an action in court against an employer, i.e., a contractor or subcontractor, that fails to pay the prevailing wage to its employees as required. Nothing in that statute requires the awarding body to appear or participate in legal proceedings from such action by the joint labor-management committee. Thus, Labor Code section 1771.2 does not mandate any activities on the awarding body.

---

[163] Labor Code section 1771.6, Title 8, California Code of Regulations, section 17202, subdivision (c).

Summary of Required Activities

Therefore, staff finds only the following activities are required by the plain language of the test claim statutes and regulations:

- Obtain both the general prevailing wage rate and any special rates from the Director of Industrial Relations, and ensure that the appropriate rates are used in the contract. (Lab. Code, § 1773, tit. 8, Cal. Code Regs., §§ 16202 & 16204.)
- Include a statement of prevailing rates of per diem wages in the call and advertisement for bids, the bid specifications, and in the public works contract itself, or, in lieu of those requirements, the district may include in the call for bids, bid specifications, and the contract itself a statement to the effect that copies of the prevailing rate of wages are on file in the awarding body's principal office, and in that case the district must post the statement at all job sites. (Lab. Code, § 1773.2.)
- Provide a copy of the contract award to the Division of Apprenticeship Standards, when apprentices will be used in the contract, and include language in the contract regarding apprenticeship requirements. (Lab. Code, §§ 1773.3 & 1777.5, subd. (n).)
- Take cognizance of violations of the prevailing wage laws in the course of the execution of the contract, and report any suspected violations to the Labor Commissioner. (Lab. Code, § 1726.)
- Regarding certified payroll records, perform the following activities:
    - Upon a request made to the awarding body by the public for payroll records:
        - send an acknowledgment to the requestor including the costs to be paid for preparing the records (Cal. Code Regs., tit. 8, § 16400, subd. (c));
        - obtain certified payroll records from the contractor, including specified information in the request (Cal. Code Regs., tit. 8, § 16400, subd. (d));
        - mark or obliterate the records to prevent disclosure of an individual's private information (Lab. Code, § 1776, subd. (e), Cal. Code Regs., tit. 8, § 16403, subd. (b))
        - provide copies of the records to the requestor (Lab. Code, § 1776, subd. (b)(3)); and
        - retain copies of the records for at least 6 months (Cal. Code Regs., tit. 8, § 16403, subd. (a)).
    - Withhold penalties from contractor progress payments for noncompliance with Labor Code section 1776, upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g).)
    - Insert in the contract stipulations regarding the contractor's and subcontractor's obligations pursuant to Labor Code section 1776. (Lab. Code, § 1776, subd. (h).).

- Withhold amounts necessary to satisfy Civil Wage and Penalty Assessments issued by the Labor Commissioner and receive from the contractor any money withheld for such purpose by the contractor from the subcontractor. (Lab. Code, § 1727.)
- Transmit funds withheld in response to a civil wage and penalty assessment to the Labor Commissioner upon receipt of a certified copy of a final order that is no longer subject to judicial review. (Lab. Code, § 1742, subd. (f))

Staff further finds that these activities are only mandated by the state for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113; and
    a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
    b. for districts with an average daily attendance of 35,000 or greater, when the total number of hours on the job exceeds 750, or the material cost exceeds $21,000.
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
    a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
    b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds $21,000.
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a public project, as defined, is not an emergency as set forth in Public Contract Code section 20113 or 20654, and the project cost will exceed $30,000.

Issue 2: Do the test claim statutes or regulations impose a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

A "new program or higher level of service" is imposed when the mandated activities: a) are new in comparison with the pre-existing scheme; *and* b) result in an increase in the actual level or quality of governmental services provided by the district.[164] To make this determination, the mandated activities must be compared with the legal requirements in effect immediately before the enactment of the test claim statutes or regulations.

[164] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Obtain Prevailing Wage Rate (Lab. Code, § 1773, Cal. Code Regs, tit. 8, §§ 16202 & 16204)

The statute and regulations require the awarding body to obtain both the general prevailing wage rate and any special rates from the Director of Industrial Relations, and ensure that the appropriate rates are used in the contract.

Prior to 1975, Labor Code section 1773 stated in relevant part:

> The body awarding any contract for public work, or otherwise undertaking any public work, shall *ascertain* the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification or type of workman needed to execute the contract. ...
>
> In determining such rates, the *awarding body* shall ascertain and consider the applicable wage rates established by collective bargaining agreements and such rates as may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where such rates do not constitute the rates actually prevailing in the locality, the *awarding body* shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification or type of work involved. The rate fixed for each craft, classification or type of work shall be not less than the prevailing rate paid in such craft, classification or type of work.
>
> If the *awarding body* determines that the rate of prevailing wage for any craft, classification or type of workman is the rate established by a collective bargaining agreement, the *awarding body* may adopt such rate by reference as provided for in such agreement and such determination shall be effective for the life of such agreement or until the *awarding body* determines that another rate should be adopted. (Emphasis added.)[165]

The Department of Industrial Relations explains how this pre-existing process worked:

> Labor Code section 1773 required the local agency to consider the "rates established by collective bargaining agreements and such rates as may have been predetermined for federal public works." [Citations.] If these two mandatory sources of information were insufficient to determine the rate actually prevailing, local agencies had to "obtain and consider further data from the labor organizations and employers or employer associations concerned." *Id.* Local agencies had to obtain further information on what rates to pay each craft for overtime and holiday work, depending on which collective bargaining agreement, if any, applied.[166]

In this pre-existing law, the burden was on the awarding body to ascertain and determine the prevailing wage rates for public works projects.

---

[165] Statutes 1971, chapter 785

[166] Department of Industrial Relations comments, submitted January 15, 2003, page 9.

Labor Code section 1773 now requires the awarding body to "obtain" the general prevailing rate of per diem wages from the Director of Industrial Relations.[167] Section 16202 of the regulations requires the awarding body to request the Director to make a determination for a particular craft, classification or type of worker not covered by a general determination.

Thus, the test claim statute and regulation shifted this responsibility for ascertaining and determining prevailing wage rates *from* the awarding body *to* the Director of Industrial Relations. The Department of Industrial Relations explains the current process as follows:

> Currently, the Director performs this arduous task of determining what are prevailing wages. [Citations.] The definition of prevailing wages has not changed substantially since prior to 1975, including the requirement that the wages be set for each local geographic area. The Director, through the Division of Labor Statistics and Research ("DLSR") publishes general prevailing wage determinations twice each year for each craft or trade, by county. [Citations.] In addition, DLSR provides special determinations when requested. [Citations.] This work costs the Department approximately $2,071,082.39 per year, based on the prior two and a half fiscal years. [Citations.] This is work local agencies no longer do. Instead, local agencies are required simply to check the most recent determination before advertising a request for bids.

With regard to the obligation to "ensure" that the correct rate is used, the Department states:

> Prior to 1975, when local agencies determined local prevailing wages, the duty to obtain the correct prevailing wage was subsumed in the requirement that agencies ensure they were using the correct rate. However, any interested party could request review of the local agency's determination, and the local agency then had to justify its determination. [Citations.]
>
> In exchange for the Director's making rate determinations, local agencies now obtain the correct prevailing wages from the Director. [Citations.] This task no longer requires local agencies to do the actual investigations, surveys, and calculation ("determination") of the prevailing wage. That is, while the local agencies assume the burden of sending a letter, making a phone call, or checking the Department's website, this writing, sending or calling is substantially less expensive than was their prior obligation to investigate and calculate prevailing wages for each craft or trade on public works projects. ...[168]

The Supreme Court has stated that a reimbursable "higher level of service" must result in an increase in the actual level or quality of governmental services provided.[169] Here that has not occurred. Rather, the test claim statute accomplishes a shift of responsibility *from* school

---

[167] Statutes 1976, chapter 281.

[168] *Id.* at page 10.

[169] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

districts *to* the state. And, although the district is left with the responsibility for obtaining the prevailing wage rates from the state and continuing to ensure that the proper rate is used in the contract, this result constitutes not a higher level of service but a lower level of service on the part of the district.

Based on the foregoing, staff finds Labor Code section 1773 and sections 16202 and 16204, mandating the activity of obtaining the prevailing wage rates from the Department of Industrial Relations and ensuring the proper rate is used in the contract, do not impose a new program or higher level of service on school districts.

Statement of Prevailing Wages (Lab. Code, § 1773.2)

The statute requires the awarding body to include a statement of prevailing rates of per diem wages in the call and advertisement for bids, the bid specifications, and in the public works contract itself, or, in lieu of those requirements, the awarding body may include in the call for bids, bid specifications, and the contract itself a statement to the effect that copies of the prevailing rate of wages are on file in the awarding body's principal office, and in that case must post the statement at all job sites.

Prior to 1975, Labor Code section 1773.2 stated:

> The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification or type of workman needed to execute the contract.
>
> In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may refer to copies thereof on file at its principal office, which shall be made available to any interested party on request. In the event that the awarding body chooses to refer to a copy of the prevailing rate of per diem wages on file at its principal office, in lieu of specifying them in each call for bids, and in the bid specifications and in the contract itself, the awarding body shall publish its determination of the prevailing rate of wages at least one time in a newspaper of general circulation during each year, and in such event, the awarding body shall cause a copy thereof to be posted at each jobsite.[170]

In the 1977 test claim statute, section 1773.2 was amended *solely* to remove the requirement that the awarding body publish prevailing wage rate determinations in the newspaper each year when the awarding body chooses the option of referring to a copy of the prevailing wage rates on file at its principal office.[171]

A reimbursable "higher level of service" must result in an increase in the actual level or quality of governmental services provided. Here, that has not occurred. Instead, the burden on school districts has been lessened by removing the requirement to annually publish their prevailing

[170] Statutes 1974, chapter 876.

[171] Statutes 1977, chapter 423.

wage rates in the newspaper under specified circumstances. This result constitutes not a higher level of service but a lower level of service. Therefore, staff finds Labor Code section 1773.2 does not impose a new program or higher level of service on school districts.

Certified Payroll Records (Lab. Code, § 1776, subdivisions (b), (e), (g) & (h), Cal. Code Regs., tit. 8, §§ 16400 & 16403)

The statute and regulations require the awarding body to perform the following activities:

- Upon a request made to the awarding body by the public for payroll records:
  - send an acknowledgment to the requestor including the costs to be paid for preparing the records;
  - obtain certified payroll records from the contractor, including specified information in the request;
  - mark or obliterate the records to prevent disclosure of an individual's private information
  - provide copies of the records to the requestor; and
  - retain copies of the records for at least 6 months.
- Withhold penalties from contractor progress payments for noncompliance with Labor Code section 1776, upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement.
- Insert in the contract stipulations regarding the contractor's and subcontractor's obligations pursuant to Labor Code section 1776.

Prior to 1975, Labor Code section 1776 stated:

> Every contractor and subcontractor shall keep an accurate record showing the name, occupation, and the actual per diem wages paid to each workman employed by him in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement.[172]

The test claim statutes modified section 1776 to require: 1) the contractor to *furnish* certified copies of payroll records to the awarding body upon request,[173] at which point the payroll records become subject to the California Public Records Act;[174] 2) the awarding body to *obtain and provide copies of the records to the public* upon request[175] but marked or obliterated to prevent disclosure of an individual's name, address, and social security number;[176] 3) the awarding body, upon the request of the Division of Apprenticeship

[172] Statutes 1949, chapter 127.

[173] Labor Code section 1776, subdivision (b)(2).

[174] Government Code sections 6250 et seq.

[175] Labor Code section 1776, subdivision (b)(3).

[176] Labor Code section 1776, subdivision (e).

Standards or the Division of Labor Standards Enforcement, to withhold from progress payments any penalties assessed for noncompliance;[177] and 4) the awarding body to insert stipulations in the contract regarding the contractor's requirements.[178] Sections 16400 through 16403 of the regulations were added to: 1) require the awarding body to acknowledge a request for payroll records to the requestor, and provide the costs the requestor must pay for the awarding body and contractor to prepare the records; 2) specify the information required in a request to the contractor for the records; 3) establish fees to be charged for preparing and reproducing the records; and 4) require the awarding body to keep unredacted copies of requested payroll records for at least 6 months following completion and acceptance of the project. These requirements are new in comparison to the preexisting law.

The Department of Industrial Relations states that the test claim statutes modifying Labor Code section 1776 did not significantly change any awarding body requirement:

> Prior to 1975, there was no provision for local agencies to obtain or copy [Certified Payroll Records]. Since local agencies did their own enforcement, however, they routinely obtained them. ... Before 1975, the Public Records Act made such information disclosable on demand from the public. See Government Code §§ 6252 ["Local agency" includes school district], 6252 (d) [definition of public record]. The post 1975 amendments to § 1776 did not change local agencies' pre-existing requirements to provide copies of public records (including payroll records) to the public. ...
>
> Labor Code § 1776 did not change any local agency requirement in any meaningful way. Test Claimant claims that there is a new mandate because local agencies now have to make copies of the [Certified Payroll Records] on request by members of the public and obliterate certain personal information. First, the requirement to obliterate personal information is not necessarily with the local agency. Labor Code § 1776(e) merely requires that the copy provided to the public by DLSE or the local agency "be obliterated," which can be done by the private contractor. ...[179]

Staff disagrees with the Department. The previous statute did not provide for the awarding body to *obtain a copy* of the payroll records, merely the ability to inspect them. The California Public Records Act[180] provides public access only to writings that are in the *possession* of state or local agencies.[181] Consequently, there was no pre-existing duty on the district to provide public access to the records. The fact that such copies were routinely obtained by the

---

[177] Labor Code section 1776, subdivision (g).

[178] Labor Code section 1776, subdivision (h).

[179] Department of Industrial Relations comments, submitted January 15, 2003, pages 14-15.

[180] Government Code section 6250 et seq.

[181] Government Code section 6252, subdivision (e); "public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

awarding body in the course of enforcing the CPWL does not change the duties imposed by the previous statute, which plainly did not require the awarding body to obtain the records on behalf of the public or make the specified redactions. Moreover, Government Code section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the school district for those costs incurred after the operative date of the mandate. Additionally, although it is true that personal information could be "obliterated" by the contractor, the test claim statutes require the awarding body to provide the record to the public, in a form that prevents disclosure of individual information. Therefore, staff finds it is the awarding body's responsibility to mark or obliterate the record to prevent disclosure of individual information.

Thus, there are new requirements of school districts as awarding bodies that were not required under pre-existing law:

- Perform the following activities upon a request by the public for payroll records:
    - send an acknowledgment to the requestor including the costs to be paid for preparing the records (Cal. Code Regs., tit. 8, § 16400, subd. (c));
    - obtain certified payroll records from the contractor, including specified information in the request (Cal. Code Regs., tit. 8, § 16400, subd. (d));
    - mark or obliterate the records to prevent disclosure of an individual's private information (Lab. Code, § 1776, subd. (e), Cal. Code Regs., tit. 8, § 16403, subd. (b))
    - provide copies of the records to the requestor (Lab. Code, § 1776, subd. (b)(3)); and
    - retain copies of the records for at least 6 months (Cal. Code Regs., tit. 8, § 16403, subd. (a)).
- Withhold penalties from contractor progress payments for noncompliance, upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g)).
- Insert in the contract stipulations regarding the contractor's and subcontractor's obligations pursuant to Labor Code section 1776 (Lab. Code, § 1776, subd. (h)).

These new requirements do provide a higher level of service to the public since the public now has access to certified payroll records through the awarding body, and the individual employee's rights to privacy are protected by the awarding body obliterating certain information. Withholding penalties from progress payments helps enforce the law to ultimately ensure contractors' cooperation. Moreover, placing stipulations in the contract provides notice to the contractor of his or her requirements before the contract is signed. Staff therefore finds that the new requirements imposed on school districts as awarding bodies constitute a new program or higher level of service within the meaning of article XIII B, section 6.

Apprenticeship Requirements (Lab. Code, §§ 1773.3 & 1777.5, subd. (n))

The statutes require the awarding body to provide a copy of the contract award to the Division of Apprenticeship Standards when apprentices will be used in the contract, and include language in the contract regarding apprenticeship requirements.

Prior to 1975, Labor Code section 3098 stated:

> An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. ... Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.[182]

Section 3098 was renumbered to section 1773.3 in Statutes 1978, chapter 1249, with substantially the same language. Therefore, the requirements existed prior to 1975 and no new program or higher level of service is imposed.

Prior to 1975, Labor Code section 1777.5 stated in relevant part:

> The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. Such stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.[183]

This exact language was ultimately renumbered to subdivision (n) in Statutes 1999, chapter 903. Therefore, the requirements existed prior to 1975 and no new program or higher level of service is imposed.

Take Cognizance of and Report Suspected Violations (Lab. Code, § 1726), Withhold Funds for Civil Wage and Penalty Assessments (Lab. Code, § 1727), and Transmit Funds to Labor Commissioner (Lab. Code, § 1742, subd. (f))

These statutes require the awarding body to: 1) take cognizance of violations of the prevailing wage laws in the course of the execution of the contract, and report any suspected violations to the Labor Commissioner; 2) withhold any amounts necessary to satisfy a Civil Wage and Penalty Assessment issued by the Labor Commissioner and receive from the contractor any money withheld for such purpose by the contractor from the subcontractor; and 3) transmit funds withheld in response to a civil wage and penalty assessment to the Labor Commissioner upon receipt of a certified copy of a final order that is no longer subject to judicial review.

---

[182] Statutes 1974, chapter 1095.

[183] Statutes 1974, chapter 965.

With regard to the awarding body's role in reporting CPWL violations, prior to 1975, Labor Code section 1726 stated:

> The body awarding the contract for public work shall take cognizance of violations of the provisions of this chapter committed in the course of the execution of the contract.[184]

The test claim statute, Statutes 2000, chapter 954, modified section 1726 to state in relevant part:

> The body awarding the contract for public work shall take cognizance of violations of the provisions of this chapter committed in the course of execution of the contract, and *shall promptly report* any suspected violations to the Labor Commissioner. (Emphasis added.)

Thus, there was a pre-existing requirement for awarding bodies to "take cognizance" of violations, and this requirement does not impose a new program or higher level of service. There is, however, a new requirement to "report" suspected violations to the Labor Commissioner.

With regard to withholding funds from contractor payments for CPWL violations, prior to 1975, Labor Code section 1727 stated:

> Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts which have been forfeited pursuant to any stipulation in a contract for public work, and the terms of this chapter. But no sum shall be withheld, retained or forfeited, except from the final payment, without a full investigation by either the Division of Labor Law Enforcement or by the awarding body.[185]

The test claim statute, Statutes 2000, chapter 954, modified section 1727, which states:

> (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom any amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.
>
> (b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding

---

[184] Statutes 1937, chapter 90.

[185] Statutes 1945, chapter 1431.

body until receipt of a final order that is no longer subject to judicial review.

Thus, the only change in the awarding body's responsibility is to now withhold amounts required to satisfy a civil wage and penalty assessment made by the Labor Commissioner, rather than the previous requirement to withhold amounts forfeited pursuant to a stipulation in the contract or for other violations of the CPWL, once a full investigation was conducted by the Division of Labor Law Enforcement or by the awarding body.

In the same test claim statute, Statutes 2000, chapter 954, Labor Code section 1742 was added to provide a hearing procedure for contractors or subcontractors to appeal a civil wage and penalty assessment. Subdivision (f) of that section requires an awarding body that has withheld funds in response to a civil wage and penalty assessment to transmit the withheld funds to the Labor Commissioner, upon receipt of a certified copy of a final order that is no longer subject to judicial review.

The Department of Industrial Relations argues that these are not new requirements, explaining the historical and current processes as follows:

> Prior to 1975, local agencies were required both to "take cognizance" of violations and to withhold funds owed to contractors for prevailing wage violations. Labor Code §§ 1726, 1727. If there were insufficient funds available for withholding, then local agencies notified the Labor Commissioner of the violation. The local agency, with the Labor Commissioner's assistance filed civil lawsuits against the offending contractors. *Id.*
>
> This obligation to report violations to the Labor Commissioner has not changed. Enforcement of prevailing wage violations was removed from local agencies as of 2001, Stats. 2000, ch. 954. In exchange for this reduction in work for local agencies, the [L]egislature added a reporting responsibility. ...
>
> Prior to 1975, local agencies withheld funds owed contractors for prevailing wage violations. Labor Code § 1727. This obligation did not change after 1975. In 2000, as part of the overall change in enforcement, private contractors had to withhold funds from offending subcontractors if the local agency had not withheld sufficient funds. The local agency had no role in this process. [Citations.]
>
> ... [T]he Labor Commissioner did not issue citations against contractors prior to 1975. Local agencies did the bulk of the enforcement.
>
> Currently, the Labor Commissioner does all the enforcement work, and local agencies do no more than withhold funds when the Labor Commissioner informs them of violations. This is identical to local agencies' historic responsibility to "take cognizance" of violations and withhold payments. [186]

[186] Department of Industrial Relations comments, submitted January 15, 2003, pages 16-17.

Under the previous process, the awarding body would take cognizance of CPWL violations pursuant to Labor Code section 1726, do its own investigations and enforcement, and withhold any penalties from contractor payments pursuant to Labor Code section 1727, seeking assistance from the Labor Commissioner as needed. Currently, according to the Department of Industrial Relations, the Labor Commissioner does all the enforcement work, unless the awarding body enforces the CPWL violations by voluntarily establishing a Labor Compliance Program. Thus, the test claim statutes have shifted primary enforcement of the CPWL from local agencies to the state, leaving awarding bodies the option to implement a Labor Compliance Program. In addition, there is no substantive change in the requirement that awarding bodies withhold funds from contractors for CPWL violations; the triggering mechanism is now a civil wage and penalty assessment issued by the Labor Commissioner rather than the completion of an investigation by the Division of Labor Law Enforcement or by the awarding body.

The Supreme Court has stated that a reimbursable "higher level of service" must result in an increase in the actual level or quality of governmental services provided.[187] Here that has not occurred. Rather, the test claim statute accomplishes a shift of responsibility *from* school districts *to* the state with regard to enforcement of the CPWL. And, although the district is left with some minor responsibility for reporting suspected violations of the CPWL to the Labor Commissioner and transmitting withheld funds at the appropriate time, this result constitutes not a higher level of service but a lower level of service. With regard to withholding funds from contractors for CPWL violations, there is no change in that level of service.

Based on the foregoing, staff finds that Labor Code sections 1726, 1727 and 1742, subdivision (f), do not impose a new program or higher level of service on school districts.

Summary

Therefore, staff finds the activities listed below that are required of K-12 school districts or community college districts when acting as an awarding body, constitute a new program or higher level of service within the meaning of article XIII B, section 6, but only when triggered by repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113; and
    a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
    b. for districts with an average daily attendance of 35,000 or greater, when the total number of hours on the job exceeds 750, or the material cost exceeds $21,000.

[187] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
    a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
    b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds $21,000.
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a public project, as defined, is not an emergency as set forth in Public Contract Code section 20113 or 20654, and the project cost will exceed $30,000.

Activities constituting a new program or higher level of service under the foregoing circumstances:

- Perform the following tasks upon a request made to the awarding body by the public for certified payroll records:
    - send an acknowledgment to the requestor including the costs to be paid for preparing the records (Cal. Code Regs., tit. 8, § 16400, subd. (c));
    - obtain certified payroll records from the contractor, including specified information in the request (Cal. Code Regs., tit. 8, § 16400, subd. (d));
    - mark or obliterate the records to prevent disclosure of an individual's private information (Lab. Code, § 1776, subd. (e), Cal. Code Regs., tit. 8, § 16403, subd. (b))
    - provide copies of the records to the requestor (Lab. Code, § 1776, subd. (b)(3)); and
    - retain copies of the records for at least 6 months (Cal. Code Regs., tit. 8, § 16403, subd. (a)).
- Withhold penalties from contractor progress payments for noncompliance with Labor Code section 1776, upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g).)
- Insert in the contract stipulations regarding the contractor's and subcontractor's obligations pursuant to Labor Code section 1776. (Lab. Code, § 1776, subd. (h).)

Issue 3: Do the test claim statutes or regulations impose costs mandated by the state within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution?

For these statutes to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the statutes must impose "costs mandated by the state" pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher

level of service. The claimant alleged in the original test claim "it is estimated that the district has incurred, or will incur, in excess of $200 in staffing and other costs in excess of revenues annually, for the period from July 1, 2000 through June 2002, to implement the new duties mandated by the state, for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement."[188]

Thus, there is evidence in the record, signed under penalty of perjury that the claimant will or has incurred "costs mandated by the state."

Government Code section 17556 states in relevant part that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds:

> (d) the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The increased level of service at issue is the preparation and copying of certified payroll records under Labor Code section 1776, subdivisions (b) and (e). Subdivision (e) states "the requesting party shall, prior to being provided the records, reimburse the costs of *preparation* by ... the entity through which the request was made." Subdivision (i) of that section provides that the Director of the Department of Industrial Relations "shall adopt rules consistent with the California Public Records Act ... and the Information Practices Act of 1977, ... governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section." Section 16402 of those regulations states:

> The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be $1 for the first page of the payroll record and 25 cents for each page thereafter, plus $10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.

Thus, the Department has established "reasonable fees to be charged" of the requesting party to cover the costs of preparation of the records. Construction of a statute by the administrative officials charged with its enforcement or interpretation may not be controlling but is entitled to

---

[188] On page 7 of Exhibit 6, "Second Declaration of William McGuire," of the test claim amendment filed July 31, 2003, claimant states:

> To the extent that Clovis Unified School District commences a public works project subject to Labor Code Section 1771.7, it is estimated that Clovis Unified School District will incur in excess of $1,000, annually, in staffing and other costs to implement these new duties mandated by the state for which the district will not be reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

great weight and will be followed unless it is clearly erroneous or unauthorized.[189] There is no evidence in the record to show that the costs allowed by the Department's regulation are not sufficient to cover the actual costs of preparation of these payroll records.

In the ordinary sense, "preparation" is defined as "the act or process of preparing."[190] "Prepare" is defined as "to make ready in advance for a particular purpose, event or occasion."[191] Based on these definitions, and absent any other information in the record, staff finds that all activities leading up to getting the records ready to be released, including reproduction and actually providing the records, are included in the fees that can be recovered from the requesting party. Thus includes the following activities:

- obtain certified payroll records from the contractor, including specified information in the request (Cal. Code Regs., tit. 8, § 16400, subd. (c));
- send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records (Cal. Code Regs., tit. 8, § 16400, subd. (d));
- make the specified redactions (Lab. Code, § 1776, subd. (e), Cal. Code Regs., tit. 8, § 16403, subd. (b)) ; and
- provide copies of the records to the requestor (Lab. Code, § 1776, subd. (b)(3)).

Therefore, staff finds that a school district has authority to charge fees sufficient to pay for this portion of the increased level of service, and Government Code section 17556, subdivision (d), is applicable to deny reimbursement for those activities.

Staff finds the following remaining activities do impose costs mandated by the state, but only when such activities result from a public works project for repair or maintenance that must be contracted for pursuant to the Public Contract Code:

- Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- Withhold penalties from contractor progress payments for noncompliance with Labor Code section 1776, upon request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g).)
- Insert in the contract stipulations regarding the contractor's and subcontractor's obligations pursuant to Labor Code section 1776. (Lab. Code, § 1776, subd. (h).)

Conclusion

Staff concludes that Labor Code section 1776, subdivisions (g) and (h), and section 16403, subdivision (a), of the Department of Industrial Relations' regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, but only when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002,

---

[189] *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683.

[190] Webster's II, New Collegiate Dictionary, 1999, page 873, column 1.

[191] *Ibid.*

17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113; and
    a. for districts with an average daily attendance of less than 35,000, when the total number of hours on the job exceeds 350; or
    b. for districts with an average daily attendance of 35,000 or greater, when the total number of hours on the job exceeds 750, or the material cost exceeds $21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
    a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
    b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds $21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the Uniform Public Contract Cost Accounting Act (UPCCAA), when a public project, as defined, is not an emergency as set forth in Public Contract Code section 20113 or 20654, and the project cost will exceed $30,000.[192] (Pub. Contract Code, § 22032.)

Only the following activities for the foregoing projects are reimbursable:

- Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- Withhold penalties from contractor progress payments for noncompliance with Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g).)
- Insert in the contract stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776. (Lab. Code, § 1776, subd. (h).)

None of the other test claim statutes, regulations or alleged executive orders that were pled mandate a new program or higher level of service subject to article XIII B, section 6.

Recommendation

Staff recommends the Commission adopt this analysis to partially approve the test claim.

[192] Prior to January 1, 2007, the dollar limit for public projects that could be performed by the district with its own forces was $25,000.

CPeople v. Oken
Cal.App.2.Dist.

THE PEOPLE, Plaintiff,
v.
HARRY OKEN et al., Defendants; TONY ALARCON, Appellant; EL MONTE SCHOOL DISTRICT et al., Respondents.
Civ. No. 22496.

District Court of Appeal, Second District, Division 3, California.
Apr. 17, 1958.

HEADNOTES

(1) Appeal and Error § 41--Decisions Appealable--Orders on Motion to Strike.
While an order striking a pleading is not ordinarily appealable, the rule is otherwise where a cross-complaint is directed against cross-defendants not otherwise parties to the action.

(2) Pleading § 171--Amendment--On Leave of Court.
An attempted incorporation of counts or causes of action in an amended cross-complaint without leave of court is ineffective and may not be treated as a part of the pleading in the case.
See **Cal.Jur.2d,** Pleading, § 232; **Am.Jur.,** Pleading, § 291.
(3) Schools § 56, 57--Buildings and Construction.
A private citizen may not maintain an action for a judgment declaring that the public interest and necessity require the construction by a school district of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" described in the pleading; where, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine.

(4) Eminent Domain § 11, 150(1)--Who May Exercise Right-- IndividualsPleadings.
A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the property sought to be acquired to one of the public uses provided in Code Civ. Proc., § 1238, but must also make it appear that he is authorized to devote the property to the public use in question or that he is a person authorized to administer or have "charge of such use."
See **Cal.Jur.2d,** Eminent Domain, §§ 229, 282; **Am.Jur.,** Eminent Domain, § 28.
(5) Pleading § 13--Subject Matter--Facts Judicially Noticed.
An allegation by way of conclusion that the pleader "is a person, competent and qualified to acquire the real property" described in his pleading "as agent of the state and/or person in charge of the uses" therein set forth, should be disregarded, where the appellate court judicially knows it is untrue.

(6) Schools § 2--Legislative Power and Duty.
Const., art. IX, §§ 5, 6, declaring that the Legislature shall provide for "a system of common schools" and "a public school system," make the school system a matter of state care and supervision; the term "system" itself imports a unity of purpose as well as entirety of operation, and the direction to the Legislature to provide "a" system of common schools means one system applicable to all common schools; this duty, so far as the state has by the adoption of the Constitution undertaken it, cannot be delegated to any agency.
See **Cal.Jur.,** Schools, §§ 2, 4.
(7) Pleading § 254--Motion to Strike--Amended Pleading.
An amended cross-complaint was properly stricken by the trial court where it wholly failed to state a cause of action and was patently frivolous and sham.

(8) Pleading § 254--Motion to Strike--Amended Pleading.
Though there is no statutory provision for striking complaints from the files as there is with respect to sham or frivolous answers (Code Civ. Proc., § 453), a court may, by virtue of its inherent power to prevent frustration or abuse of its processes, strike a purported complaint that fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration.

SUMMARY

APPEAL from an order of the Superior Court of Los Angeles County striking a third amended cross-

complaint. Aubrey N. Irwin, Judge. Affirmed.

COUNSEL

Alexander Ruiz and Manuel Ruiz, Jr., for Appellant.

Harold W. Kennedy, County Counsel (Los Angeles), and Edwin P. Martin, Deputy County Counsel, for Respondents.

PATROSSO, J. pro tem. [FN*]

FN* Assigned by Chairman of Judicial Council.

This is an appeal by cross-complainant Tony Alarcon from an order striking his third amended cross-complaint as against the cross-defendants El Monte School District and county of Los Angeles. (1) While an order striking a pleading is not ordinarily appealable, the rule is otherwise where, as here, the cross-complaint is directed against cross-defendants not otherwise parties to the action. (*Trask v. Moore* (1944), 24 Cal.2d 365, 373 [149 P.2d 854].)

The action in which the cross-complaint was filed is one instituted on behalf of the People of the State of California by ***458** the district attorney of Los Angeles County against numerous defendants, including cross- defendant, alleged to be the owners or occupants of properties within an area comprising some 24 acres located in the county of Los Angeles and commonly known as "Hick's Camp," to abate a public nuisance alleged to exist upon the properties located therein by reason of the maintenance thereon of dilapidated buildings and unsanitary conditions therein more particularly described.

A demurrer having been sustained with leave to amend to the original cross-complaint, appellant filed a second amended cross-complaint containing four separate causes of action. Demurrers interposed by the respondents to the latter complaint were sustained without leave to amend as to the first, second and fourth cause of action thereof. Thereafter appellant filed a third amended cross-complaint which was stricken upon motion of the respondents as hereinbefore stated.

The third amended cross-complaint, as is likewise true of its predecessors, is in many respects a remarkable document. It purports to incorporate therein by reference, the first, second and fourth causes of action of the second amended cross-complaint to which, as previously stated, demurrers had been sustained without leave to amend. It then alleges that the action is brought by the appellant "on behalf of apprximately [sic] 35 persons similarly situated, named defendants, in the second amended complaint of nuisance on file herein, and also as agent for the State of California, and the person in charge of the public uses hereinafter set forth and requested." It then alleges that the El Monte School District and numerous individually named cross-defendants claim an interest in the property described in Exhibit "A," attached to the cross-complaint, which apparently comprises a portion of the property described in plaintiff's complaint, whereon are located the conditions which are sought to be abated as a public nuisance. It further alleges "that the public interest and necessity require that the said property be acquired by cross complainant as agent of the State of California, as provided in section 1001 of the California Civil Code. That cross complainant, Tony Alarcon, is a person, competent and qualified to acquire the real property and improvements thereon, described herein, as agent of the State and/or person in charge of the uses hereinafter set forth. That cross complainant seeks to take and condemn private property, to wit: Real Estate and improvements, for the public uses hereinafter ***459** set forth. That the plaintiff and cross defendants, El Monte School District, Ernest Roll, District Attorney for Los Angeles County and the County of Los Angeles, are public bodies within the purview of subsection 21 of the section 1238 of the California Code of Civil Procedure, ... to wit: To demolish, clear, abate or remove buildings from the area known as 'Hicks Camp' and herein described in exhibit 'A,' for the reason that the same are detrimental to the health, safety and morals of the people, and because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings predominating in said area. That the public interest and necessity require the construction by the El Monte School District of a school building and also the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land hereinabove described. In conjunction therewith, said public interest and necessity require, that buildings, dwellings and structures within said tract of land be demolished, cleared, abated and/or removed, in the interest of the health, safety and morals of the people, because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings therein, in a manner that will be most compatible with the greatest public good and the least private injury. ... That there

is grave danger of the creation of a public nuisance, unless the public uses herein referred to are provided for and the public interest and necessity stated above be adjuticated [sic]."

The cross-complaint closes with a prayer that the cross-defendants be required to set forth the nature, character, extent and value of their several estates or interest in the parcels of real property sought to be condemned and the severance damage, if any, accruing thereto; that the value of each separate interest or estate sought to be condemned and the severance damages, if any, be ascertained, and that upon payment to the defendants entitled to compensation of the several amounts so ascertained, the court make and enter a final order of condemnation, "conveying to cross complainant, as agent for the state, the properties for the public use above set forth."

We have ignored the allegations contained in the first, second and fourth causes of action, contained in the second amended cross-complaint, which were attempted to be incorporated ***460** by reference in the third amended cross-complaint in view of the fact that the demurrers interposed to these causes of action had, as noted, been sustained without leave to amend. (2) The attempted incorporation of these counts in the third amended cross-complaint without leave of the court is ineffective and they may not be treated as a part of the pleading in the case. (39 Cal.Jur.2d p. 339.) Moreover, without here undertaking to set forth in detail the voluminous allegations of said counts, we are completely satisfied that the trial court properly sustained the demurrers thereto without leave to amend. Each of these three causes of action seemingly undertakes to state a cause of action for monetary and injunctive relief against the respondents upon some undiscernible theory for damages which the cross-complainant and others similarly situated allegedly will sustain if the plaintiff prevails in its action to abate the nuisances alleged to exist upon the properties owned by them.

(3) From the allegations of appellant's pleadings which we have above summarized in some detail, it would appear that the relief which he seeks thereby as against the respondents is a judgment declaring that the public interest and necessity require the construction by the respondent El Monte School District of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" in the cross-complaint described. We know of no law, and none has been called to our attention, which authorizes a private citizen to maintain such an action. Where, when or how, if at all, a school district shall construct school buildings is a matter within the sole competency of its governing board to determine. (*Montebello Unified School Dist. v. Keay* (1942), 55 Cal.App.2d 839, 843-844 [131 P.2d 384].)

If, however, the third amended cross-complaint be construed as one whereby appellant as a private citizen seeks to acquire property for the purpose of constructing and operating a public school, it is likewise unauthorized by law. Section 1001 of the Civil Code, upon which appellant assertedly seeks to predicate his action, while authorizing any person, as "an agent of the State" or as "a person in charge of such use" to acquire private property under the power of eminent domain for any of the public uses provided in section 1238 of the Code of Civil Procedure is wholly without application. (4) A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the ***461** property sought to be acquired to one of the public uses provided in section 1238, but it must likewise be made to appear that he is authorized to devote the property to the public use in question, or otherwise stated, that he is a person authorized to administer or have "charge of such use." (*Beveridge v. Lewis* (1902), 137 Cal. 619, 621 [67 P. 1040,70 P. 1083, 92 Am.St.Rep. 188,58 L.R.A. 581].) (5) While appellant alleges by way of conclusion that he "is a person, competent and qualified to acquire the real property" described in his pleading "as agent of the State and/or person in charge of the uses" therein set forth, the allegation must be disregarded, because we judicially know it is untrue. (*Wilson v. Loew's Inc.* (1956), 142 Cal.App.2d 183, 187-188 [298 P.2d 152].) (6) "The constitution declares that the legislature shall provide 'for a system of common schools,' or, as expressed elsewhere in the organic law, 'a public school system.' " (23 Cal.Jur. p. 18; Cal. Const., art. IX, §§ 5-6.) "By these two sections, the constitution makes the school system a matter of state care and supervision. The term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools. And this duty to provide for the education of the children of the state, so far as the state has, by the adoption of the

constitution, undertaken it, cannot be delegated to any agency." (23 Cal.Jur. 21-22.) As said in *Piper v. Big Pine School Dist.*, 193 Cal. 664, 669 [226 P. 926]:

"It is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the constitution. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state."

From the allegations of the cross-complaint, it affirmatively appears that "(i)n this case it is the school district, acting through its governing board, that is the agent of the State in charge of the use for which the land was sought." (*Montebello Unified School Dist. v. Keay, supra.*)

(7) The third amended cross-complaint wholly fails to state a cause of action and is patently frivolous and sham. ***462** It was therefore properly stricken by the trial court. (8) As said by this court in *Neal v. Bank of America* (1949), 93 Cal.App.2d 678, 682-683 [209 P.2d 825]:

"It may be conceded that there is no statutory provision for striking complaints from the files, as there is in respect to sham or frivolous answers. (Code Civ. Proc., § 453.)However, the courts have inherent power, by summary means, to prevent frustration, abuse, or disregard of their processes. (41 Am.Jur. §§ 346, 347, p. 527; anno., 13 Am.St.Rep. 640.) ... In *Santa Barbara County v. Janssens*, 44 Cal.App. 318 [186 P. 372], it was held that an order striking an amended cross-complaint from the files was within the jurisdiction of the trial court, and presumably correct in the absence of error disclosed by the record. The fundamental principle running through the cases is that a court is not required to tolerate a purported amended complaint which fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration. ... It cannot be doubted that the court had jurisdiction to strike plaintiff's amended complaint on the ground that it was frivolous and a sham and the order clearly was not an abuse of discretion."

The order appealed from is affirmed.

Shinn, P. J., and Wood (Parker), J., concurred.
A petition for a rehearing was denied May 7, 1958, and appellant's petition for a hearing by the Supreme Court was denied June 11, 1958. Carter, J., was of the opinion that the petition should be granted. ***463**

Cal.App.2.Dist.
People v. Oken
159 Cal.App.2d 456, 324 P.2d 58

END OF DOCUMENT

HSouthern California Labor Management Operating Engineers Contract Compliance Committee v. Aubry Cal.App.1.Dist.

SOUTHERN CALIFORNIA LABOR MANAGEMENT OPERATING ENGINEERS CONTRACT COMPLIANCE COMMITTEE, Plaintiff and Appellant,
v.
LLOYD W. AUBRY, JR., as Director, etc., Defendant and Respondent.
No. A074161.

Court of Appeal, First District, Division 4, California.
Mar. 31, 1997.

SUMMARY

The trial court denied plaintiff's petition for a peremptory writ of mandate seeking to direct the Director of the Department of Industrial Relations of the State of California to find that a dam project was subject to the state's prevailing wage law (Lab. Code, § 1720 et seq.), rather than the federal Davis-Bacon Act (40 U.S.C., § 276a(a)). (Superior Court of the City and County of San Francisco, No. 974794, William J. Cahill, Judge.)

The Court of Appeal affirmed the judgment, holding that the trial court properly denied the writ petition. Lab. Code, § 1773.5, provides that the Director of the Department of Industrial Relations "may establish rules and regulations for the purpose of carrying out this chapter, including ... the responsibilities and duties of awarding bodies under this chapter." Under Cal. Code Regs., tit. 8, §§ 16000, 16001, subd. (a), and 16001, subd. (b), federally funded projects controlled by, carried out by, and awarded by the federal government are not subject to the prevailing wage law, even if it requires a higher wage than the Davis-Bacon Act. In this case, the awarding body was an agency of the federal government. Under the "Local Cooperation Agreement," the federal agency was given ultimate authority over construction, financial audits, paying construction companies, and determining that the project was complete. Since the project was controlled by a federal awarding body, the prevailing wage law did not apply under the regulations, which were valid inasmuch as they were consistent with case law and the prevailing wage law statutes. The court further held that the director did not violate the California Constitution (Cal. Const., art. III, § 3.5) by refusing to enforce a statute on constitutional or preemption grounds. (Opinion by Hanlon, J., with Anderson, P. J., and Reardon, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Public Works and Contracts § 6--Contracts-- Contractors' Rights and Liabilities--State Prevailing Wage Law--As Preempted by Federal Davis-Bacon Act.
The trial court properly denied a writ petition that would have directed the Director of the Department of Industrial Relations of the State of California to find that a dam project was subject to the state's prevailing wage law (Lab. Code, § 1720 et seq.), rather than the federal Davis-Bacon Act (40 U.S.C., § 276a(a)). Lab. Code, § 1773.5, provides that the director "may establish rules and regulations for the purpose of carrying out this chapter, including ... the responsibilities and duties of awarding bodies under this chapter." Under Cal. Code Regs., tit. 8, §§ 16000, 16001, subd. (a), and 16001, subd. (b), federally funded projects controlled by, carried out by, and awarded by the federal government are not subject to the prevailing wage law, even if it requires a higher wage than the Davis-Bacon Act. In this case, the awarding body was an agency of the federal government. Under the "Local Cooperation Agreement," the federal agency was given ultimate authority over construction, financial audits, paying construction companies, and determining that the project was complete. Since the project was controlled by a federal awarding body, the prevailing wage law did not apply under the regulations, which were valid inasmuch as they were consistent with case law and the prevailing wage law statutes.
[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency, § 331.]
(2) Statutes § 29--Construction--Language--Legislative Intent.
A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so

as to effectuate the purpose of the law. In construing a statute, the court's first task is to look to the language of the statute itself. When the language is clear and there is no uncertainty as to the legislative intent, the court looks no further and simply enforces the statute according to its terms. The court is required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose. When used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. An overriding principle in this area is that the individual portions of a statute should be harmonized with the body of law of which it forms a part. The object that a statute seeks to achieve is of primary importance in statutory interpretation.

(3a, 3b) Public Works and Contracts § 6--Contracts--Contractors' Rights and Liabilities--State Prevailing Wage Law and Federal Davis-Bacon Act-- Purpose.
The overall purpose and object of California's prevailing wage law (Lab. Code, § 1720 et seq.) is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees. The overall purpose and object of the federal Davis-Bacon Act (40 U.S.C. § 276a(a)) is to protect local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area. The state's prevailing wage law and the Davis-Bacon Act each carry out a similar purpose. Read as a unit, they set out two separate, but parallel, systems regulating wages on public contracts. The prevailing wage law covers state contracts and the Davis-Bacon Act covers federal contracts.

(4) Administrative Law § 117--Judicial Review and Relief--Scope and Extent of Review--Arbitrary, Capricious, or Unreasonable Action.
An agency's regulation will not be set aside unless it is inconsistent with a statute, arbitrary, capricious, unlawful, or contrary to public policy. An agency's construction of statutes will generally be followed unless it is clearly erroneous.

(5) Constitutional Law § 34--Distribution of Governmental Powers--Conflicts Between Federal and State Powers--Preemption.
The supremacy clause (U.S. Const., art. VI) may entail preemption of state law either by express provision, by implication, or by a conflict between federal and state law. Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility. Further, there are situations in which state regulation, although harmonious with federal regulation, must nevertheless be invalidated under the supremacy clause. However, despite the variety of opportunities for federal preeminence, courts have never assumed lightly that Congress has derogated state regulation, but instead have addressed claims of preemption with the starting presumption that Congress does not intend to supplant state law.

(6) Labor § 10--Regulation of Working Conditions--Minimum Wage and Prevailing Wage Law.
Minimum wage laws fall under the same classification as valid regulation of the employment relationship under state police powers. The prevailing wage law (Lab. Code, § 1720 et seq.) is not a minimum wage law.

(7) Administrative Law § 10--Administrative Construction and Interpretation of Laws--Department of Industrial Relations' Authority to Determine Project Not Subject to Prevailing Wage Law.
In a mandamus proceeding to determine whether the Director of the Department of Industrial Relations of the State of California properly determined that a dam project was not subject to the state's prevailing wage law (Lab. Code, § 1720 et seq.), the director did not violate the California Constitution by refusing to find a public works to exist based on a perceived fear of unconstitutionality or conflict with federal law. Under Cal. Const., art. III, § 3.5, an administrative

agency has no power to refuse to enforce a statute on the grounds it is unconstitutional or conflicts with federal law, until an appellate court has so held. However, the California Supreme Court has held that the purpose of Cal. Const., art. III, § 3.5, was to prevent agencies from using their own interpretation of the Constitution or federal law to thwart the mandates of the Legislature, and cannot reasonably be construed to place a restriction on the authority of the Legislature to limit the scope of its own enactments. By limiting the implementation of a statute as directed by the Legislature, an agency neither declares it unenforceable, nor refuses to enforce it. Far from thwarting the Legislature's mandate, such action fulfills it. The director's administrative decisions in the present case were proper interpretations of the prevailing wage law within the scope of the Supreme Court's opinion.

COUNSEL

Carroll & Scully, Donald C. Carroll and Charles P. Scully II for Plaintiff and Appellant.

John M. Rea and Gary J. O'Mara for Defendant and Respondent. *877

HANLON, J.

Plaintiff and appellant Southern California Labor Management Operating Engineers Contract Compliance Committee (appellant) appeals from a judgment denying its petition for a peremptory writ of mandate directing defendant and respondent Lloyd W. Aubry, Jr. as Director of the Department of Industrial Relations of the State of California (respondent) to set aside his outstanding decision and issue a new determination that the Seven Oaks Dam project is a public works subject to the California prevailing wage law (Lab. Code, §§ 1771, 1720-1781) (hereinafter referred to as PWL) rather than Davis-Bacon Act, 40 United States Code section 276a(a), which is the federal prevailing wage law (hereinafter referred to as DBA).

Appellant contends: (1) the PWL applies even though the construction contract for the dam project was "awarded" by an agency of the federal government, and (2) respondent acted beyond its power by refusing to enforce a statute on constitutional or preemption grounds. We affirm.

I. *Statement of Facts*

Seven Oaks Dam project is a part of the Santa Ana River Mainstem, including Santiago Creek, California Flood Control Project. Construction of the complete flood control project is governed by a local cooperation agreement among the Department of the Army, Orange County Flood Control District, San Bernardino County Flood Control District and Riverside County Flood Control and Water Conservation District, which was executed in 1989. As a group the involved counties are denominated as "sponsors."

Relevant provisions of the local cooperation agreement are as follows:

The maximum allowable cost of the flood control project is set at $1,536,000,000. At the time of the execution of the agreement, total costs were estimated at $1,293,000,000 and the sponsors' cash contribution at $63,700,000. In addition, "sponsors shall provide all lands, easments [*sic*], rights-of-way, excavated material disposal areas, and perform relocations (excluding railroad bridges and approaches thereto) required for construction of the [flood control] project." The total contribution of the sponsors cannot exceed 50 percent or be less than 25 percent. During construction the sponsors shall provide a cash contribution of 5 percent of the total cost. No federal funds may be used to meet the sponsors' share, unless expressly authorized by statute. The federal government shall audit the sponsors' records and issue a final accounting which is binding on the sponsors. All funds contributed by the federal government and sponsors shall be placed in *878 an escrow account. The federal government shall pay the costs of construction from funds in such account.

Basic contractual "obligations of the parties" include the following: A. "The [Federal] Government, subject to and using funds provided by the Sponsors and funds appropriated by the Congress, shall expeditiously construct the [Flood Control] Project (including alterations or relocations of railroad bridges and approaches thereto) applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The sponsors shall be afforded the opportunity to review and comment on all contracts, including relevant plans, specifications and special provisions prior to the issuance of invitations for bids. The Sponsors also shall be

afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the Contractor of a Notice to Proceed for such modification or change order unless an emergency exists or immediate action is required, in which case the [Federal] Government will direct the change without review by the Sponsors. The [Federal] Government will consider the views of the Sponsors, but award of the contracts including change orders and performance of the work thereunder shall be exclusively within the control of the [Federal] Government."

The term "contracting officer" is defined in the agreement as "the Commander of the U.S. Army Engineer District, Los Angeles, or his designee." Regarding "construction, phasing and management," "[t]he contracting officer shall consider the recommendations of the [sponsors] in all matters relating to the [Flood Control] Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations."

Sponsoring counties shall hold and save the federal government free from all damages "except for damages due to the fault or negligence of the [Federal] Government or its contractors." If hazardous substances are found in the area of the flood control project, the federal government "shall, after consultation with the Local Sponsors, but in its sole discretion, determine" what action to take. The sponsors agree to comply with all applicable federal and state laws and regulations. Some laws are specifically listed, but no mention is made of the California PWL or the federal DBA.

The final relevant provision of the local cooperation agreement is: "When the [Federal] Government determines that a feature or phase of the [Flood Control] Project is complete and appropriate for operation and maintenance by a Sponsor or Sponsors, the [Federal] Government shall turn the completed feature or phase over to the responsible Sponsor or Sponsors ...." ***879**

Pursuant to the local cooperation agreement, on March 29, 1994, the United States Army Engineer District-Los Angeles entered into a contract with CBPO of America, Inc., for construction of the Seven Oaks Dam and Appurtenances. Total estimated cost for the project was $167,777,000. The contract for the Seven Oaks Dam specifically provides that "laborers and mechanics employed or working upon the site of the work" will be paid in accordance with the DBA.

II. *Applicability of PWL*

(1a) Appellant contends that the PWL applies even though the construction contract for the Seven Oaks Dam project was "awarded" by an agency of the federal government. This contention lacks merit.

The core of the PWL is Labor Code section 1771[FN1] , which provides in pertinent part: "Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers on public works." Under PWL respondent determines the general prevailing rate. (§§ 1770, 1773, 1773.6.)

FN1 Unless otherwise stated all citations to California statutes are to the Labor Code.

DBA provides in pertinent part: "The advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction ... of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed ...." (40 U.S.C. § 276a(a).)

Other California code sections which define when PWL applies are the following.

Section 1720 provides in pertinent part: "As used in this chapter, 'public works' means: ***880**

"(a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority.

"(b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. 'Public work' shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

"(c) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not."

Section 1720.2 provides in pertinent part: "For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, 'public works' also means any construction work done under private contract when all of the following conditions exist: [¶] (a) The construction contract is between private persons. [¶] ... [¶] (c) Either of the following conditions exist: [¶] (1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract. [¶] (2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work."

Section 1720.3 provides: "For the limited purposes of Article 2 (commencing with Section 1770), 'public works' also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California." Section 1720.4 covers work on nonprofit installations performed by volunteer labor.

Section 1721 provides: " 'Political subdivision' includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts."

Section 1722 provides: " 'Awarding body' or 'body awarding the contract' means department, board, authority, officer or agent awarding a contract for public work."

Section 1724 provides: " 'Locality in which public work is performed' means the county in which the public work is done in cases in which the ***881** contract is awarded by the State, and means the limits of the political subdivision on whose behalf the contract is awarded in other cases."

Section 1740 provides: "Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements."

Section 1775 provides in pertinent part: "The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her."

Section 1777 provides: "Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of section

1776 is guilty of a misdemeanor."

Section 1777.7 provides in pertinent part: "(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state."

Sections 1779 and 1780 make it a misdemeanor to charge or collect fees with respect to the employment of persons on public works. The state, political subdivisions and contractors are mentioned in the sections; the federal government is not.

(2) "A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law .... In construing a statute, our first task is to look to the language of the statute itself.... When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute ***882** according to its terms.... [¶] ... 'We are required to give effect to statutes "according to the usual, ordinary import of the language employed in framing them." ...' ... ' "If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose." ... "When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear." ... Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole ....' " (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387-388 [20 Cal.Rptr.2d 523, 853 P.2d 978], citations omitted.)

"[A]n overriding principle in this area is that the individual portions of a statute should be harmonized ... with the body of law of which it forms a part. [Citations.]" (*United Public Employees v. Public Employment Relations Bd.* (1989) 213 Cal.App.3d 1119, 1127 [262 Cal.Rptr. 158].) "The object that a statute seeks to achieve is of primary importance in statutory interpretation. [Citations.]" (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987 [4 Cal.Rptr.2d 837, 824 P.2d 643].)

(3a) The overall purpose and object of California's PWL "is to benefit and protect employees on public works projects. This general objective subsumes within it a number of specific goals: to protect employees from substandard wages that might be paid if contractors could recruit labor from distant cheap-labor areas; to permit union contractors to compete with nonunion contractors; to benefit the public through the superior efficiency of well-paid employees; and to compensate nonpublic employees with higher wages for the absence of job security and employment benefits enjoyed by public employees. [Citations.]" (*Lusardi Construction Co. v. Aubry, supra*, 1 Cal.4th at p. 987; *Independent Roofing Contractors v. Department of Industrial Relations* (1994) 23 Cal.App.4th 345, 356 [28 Cal.Rptr.2d 550].)

The overall purpose and object of DBA is " 'to protect local wage standards by preventing contractors from basing their bids on wages lower than those prevailing in the area.' [Citation.] ... [T]he Act was intended to combat the practice of 'certain itinerant, irresponsible contractors, with itinerant, cheap, bootleg labor, [who] have been going around throughout the country " picking" off a contract here and a contract there.' The purpose of the bill was 'simply to give local labor and the local contractor a fair opportunity to participate in this building program.' [Citation.]" (*Universities Research Assn. v. Coutu* (1981) 450 U.S. 754, 773-774 [101 S.Ct. 1451, 1463, 67 L.Ed.2d 662].)

(1b),(3b) The PWL and DBA each carry out a similar purpose. DBA specifically provides that it only applies to contracts "to which the United ***883** States or the District of Columbia is a party." The PWL does not contain a specific clause limiting it to contracts to which the state of California or a political subdivision thereof is a party. However, the overall effect of the various code sections which constitute the PWL is to exclude contracts of the federal government. Thus, sections 1720, subdivision (c), 1720.2, 1720.3 and 1724 refer to construction jobs under the supervision of state entities while the sections assessing penalties for violating the PWL only mention state entities (§§ 1775, 1777, 1779). No sections, either individually or collectively, mandate that contracts awarded by, or construction jobs under the supervision of, federal authorities are subject to the PWL. In fact, the only mention of the federal government refers to a federal wage law (§ 1740).

Read as a unit PWA and DBA set out two separate, but parallel, systems regulating wages on public contracts. The PWL covers state contracts and DBA covers federal contracts.

Respondent has long agreed with this interpretation of the statutes. Section 1773.5 provides: "The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter."

One such regulation is California Code of Regulations, title 8, section 16001, entitled "Public Works Subject to Prevailing Wage Law," which provides: "Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort." (Cal. Code Regs., tit. 8, § 16001, subd. (b).)

Other pertinent regulations are as follows: "Awarding body" is defined as: "Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding/letting a contract/purchase order for public works." (Cal. Code Regs., tit. 8, § 16000.)"Public Funds. Includes state, local and/or federal monies." (Cal. Code Regs., tit. 8, § 16000.)"General Coverage. State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771." (Cal. Code Regs., tit. 8, § 16001, subd. (a).)

Thus under the regulations, federally funded projects controlled by, carried out by, and awarded by the federal government are not subject to PWL, even if it requires a higher wage than DBA. Nothing in the two administrative cases of respondent, cited by appellant, contradicts the regulations because neither case involved the federal government. (Public Works ***884** Coverage Case No. 91-056, Southern Cal. Regional Rail Authority Lease of Union Pacific Right-of-Way, Decision on Appeal, Nov. 30, 1993 and Public Works Case No. 96-006, Department of Corrections, Community Correctional Facilities, June 11, 1996.)

(4) An agency's regulation "will not be set aside unless it is inconsistent with the statute, arbitrary, capricious, unlawful or contrary to public policy. [Citation.]" (*Pipe Trades Dist. Council No. 51 v. Aubry* (1996) 41 Cal.App.4th 1457, 1466 [49 Cal.Rptr.2d 208].) An agency's "construction of statutes will generally be followed unless it is clearly erroneous. [Citation.]" (*United Public Employees v. Public Employment Relations Bd., supra*, 213 Cal.App.3d at p. 1125.)

(1c) To determine if respondent's regulations are valid interpretations of the statutes, we look to cases construing the PWL, DBA and related statutes, particularly those which involve the question of preemption by federallaw. (5) "[T]he Supremacy Clause, U.S. Const., Art. VI, may entail pre-emption of state law either by express provision, by implication, or by a conflict between federal and state law. [Citations.] And yet, despite the variety of these opportunities for federal preeminence, we have never assumed lightly that Congress has derogated state regulation, but instead have addressed claims of pre-emption with the starting presumption that Congress does not intend to supplant state law. [Citation.]" (*New York Blue Cross v. Travelers Ins.* (1995) 514 U.S. 645, ___ [115 S.Ct. 1671, 1676, 131 L.Ed.2d 695, 704]; see also *Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 93-94 [160 Cal.Rptr. 733, 603 P.2d 1329].)

"Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when 'compliance with both federal and state regulations is a physical impossibility,' [citation] ...." (*Hillsborough County v. Automated Medical Labs.*(1985) 471 U.S. 707, 713 [105 S.Ct. 2371, 2375, 85 L.Ed.2d 714].) Further, "... there are situations in which state regulation, although harmonious with federal regulation, must nevertheless be invalidated under the Supremacy Clause." (*De Canas v. Bica* (1976) 424 U.S. 351, 356 [96 S.Ct. 933, 937, 47 L.Ed.2d 43].)

In *Commissioner of Labor and Ind. v. Boston Housing Auth.* (1963) 345 Mass. 406 [188 N.E.2d 150, 157-158], the highest court in Massachusetts held that under the rules of preemption a federal agency operating a housing project in Boston

pursuant to federal regulations was not subject to a state prevailing wage law. Thus, in order to avoid a serious constitutional problem it interpreted the state law as not intended by the Legislature to require ***885** action by the federal agency in conflict with proper explicit budgetary requirements of a federal law. The court reasoned, "The intention to coerce such a head on conflict with Federal authority is not lightly to be attributed to the Legislature, which must be taken to have known the existing law relating to housing projects receiving [federal] contributions."

Gartrell Const. Inc. v. Aubry (9th Cir. 1991) 940 F.2d 437, 438-439 [131 A.L.R.Fed. 773] held that a private contractor performing work for the federal government on federal property was not required to obtain a California contractor's license, because he complied with the parallel federal "responsibility" regulations for contractors. The state law was preempted by the "similar" federal requirements. To same effect see *Airport Const. and Materials, Inc. v. Bivens* (1983) 279 Ark. 161 [649 S.W.2d 830, 832].

California Comm'n v. United States (1958) 355 U.S. 534, 540, 545-546 [78 S.Ct. 446, 450-451, 453-454, 2 L.Ed.2d 470], held that California statutes and regulations regarding rates for shipping freight could not be applied to federal procurement officials because "Congress has provided a comprehensive policy governing procurement." (*Id.* at p. 540.)In reaching its holding the nation's highest court quickly distinguished certain types of state laws. "We lay to one side these cases which sustain nondiscriminatory state taxes on activities of contractors and others who do business for the United States, as their impact at most is to increase the costs of the operation. [Citations.] We also need do no more than mention cases where, absent a conflicting federal regulation, a State seeks to impose safety or other requirements on a contractor who does business for the United States." (*Id.* at p. 543 [78 S.Ct. at p. 452].) (6) Minimum wage laws fall under the same classification as valid regulation of the employment relationship under state police powers.(*De Canas v. Bica, supra*, 424 U.S. at pp. 356-357 [96 S.Ct. at pp. 936-937].) The PWL is not a minimum wage law, however. (*San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d 785, 790 [163 Cal.Rptr. 460, 608 P.2d 277]).

(1d) *Hull v. Dutton* (11th Cir. 1991) 935 F.2d 1194, 1196-1198, held that a state agency which ran a switching railroad as a private carrier was subject to the Railway Labor Act and such federal law preempted a state law establishing bonus payments for certain state employees.

Chamber of Commerce of U.S. v. Bragdon (9th Cir. 1995) 64 F.3d 497, 504 held that the National Labor Relations Act preempted a Contra Costa County ordinance which established a prevailing wage law for "wholly private construction projects." In contrast, *People v. Hwang* (1994) 25 Cal.App.4th 1168, 1172, 1181-1182 [31 Cal.Rptr.2d 61], held that PWL was not preempted by the National Labor Relations Act as to a public works contract between a private contractor and county school district. ***886**

Drake v. Molvik & Olsen Elec., Inc. (1986) 107 Wn.2d 26 [726 P.2d 1238], held that the Washington prevailing wage law governed a "federally-funded construction project by the Seattle Housing Authority" and was not preempted by DBA. (To same effect see *Siuslaw Concrete Const. v. Wash., Dept. of Transp.* (9th Cir. 1986) 784 F.2d 952, 953-954, 959 [involving a state-run training program which might be exempt under the provision of DBA].)

Metropolitan Water Dist. v. Whitsett (1932) 215 Cal. 400, 408, 417 [10 P.2d 751] upheld the constitutionality of PWL, in part "on the theory that the state as the employer having full control of the terms and conditions under which it will contract may, through its legislatures, and within constitutional limits, provide the wage which shall be paid to its employees and that the payment of a less sum shall be unlawful." Overall, the state has greater power to legislate in areas covered by federal law as "proprietor" than as "regulator." (*Building & Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc.* (1993) 507 U.S. 218, 226-227, 232-233 [113 S.Ct. 1190, 1195-1196, 1198-1199, 122 L.Ed.2d 565].)

The basic distinction uniformly maintained in the cases is that stateenacted prevailing wage regulations are valid and not preempted by federal law when applied to contracts of the state or its political subdivisions. However, those laws cannot be applied to a project which is under the complete control of the federal government. This is also the distinction

made by respondent's regulations, which provide that the PWL rather than DBA is applied to federally funded or assisted construction projects in California when wages under PWL would be higher and the projects "are controlled or carried out by California awarding bodies of any sort." Accordingly, because the regulations are consistent with California cases, federal cases, cases from other states, and the PWL statutes, we will follow them.

In the present case, the awarding body is an agency of the federal government. The local cooperation agreement governs the overall project containing the Seven Oaks Dam project at issue herein. Under the local cooperation agreement, the federal agency is given the ultimate authority over the actual construction, financial audits, paying the construction companies, determination of what to do if hazardous substances are discovered and determination that a project is complete. Thus, the Seven Oaks Dam project is controlled and carried out by a federal awarding body and under respondent's regulations, the PWL does not apply.

Appellant expresses the fear that a decision for respondent "would positively invite California public bodies in the future to give California public ***887** monies to the Corps of Engineers (or to any private party if the trial court is correct) and to let it award all contracts, thereby allowing such public bodies and employers to evade the PWL." We wish to calm appellant's fears. This court shares the Legislature's interest in protecting working people in the state. Our decision is based on a careful scrutiny of the record to discover the actual relationship between federal, state and private parties. We do nothing more than uphold the regulations and apply the facts to the regulations and statute. As in other areas of the law, each case involving public contracts and PWL will be decided on its own facts and merits.

III. *Respondent's Administrative Decision*

(7) Appellant contends that respondent director violated the California Constitution by "refusing to find a public works to exist simply because of a perceived fear of unconstitutionality or conflict with federal law." This contention lacks merit.

California Constitution, article III, section 3.5 provides that an administrative agency has no power to refuse to enforce a statute on the grounds it is unconstitutional or conflicts with federal law, until an appellate court has so held. In *Reese v. Kizer* (1988) 46 Cal.3d 996, 1002 [251 Cal.Rptr. 299, 760 P.2d 495], the Supreme Court held: "The purpose of the amendment was to prevent agencies from using their own interpretation of the Constitution or federal law to thwart the mandates of the Legislature. Its language, however, cannot reasonably be construed to place a restriction on the authority of the Legislature to limit the scope of its own enactments. By limiting the implementation of a statute as directed by the Legislature, an agency neither 'declares it unenforceable' nor 'refuses to enforce it.' Indeed, far from thwarting the Legislature's mandate, such action precisely fulfills it." (Fns. omitted.)

Respondent's administrative decisions in the instant case were proper interpretations of the PWL within the scope of *Reese*.

IV. *Disposition*

The judgment is affirmed. Costs are awarded to respondent.

Anderson, P. J., and Reardon, J., concurred.

A petition for a rehearing was denied April 29, 1997, and appellant's petition for review by the Supreme Court was denied July 9, 1997.

Cal.App.1.Dist.
Southern Cal. Lab. Management etc. Committee v. Aubry
54 Cal.App.4th 873, 63 Cal.Rptr.2d 106, 3 Wage & Hour Cas.2d (BNA) 1680, 97 Cal. Daily Op. Serv. 3259, 97 Daily Journal D.A.R. 5688

END OF DOCUMENT

Hall v. City of Taft
Cal.

GUY HALL, Respondent,
v.
THE CITY OF TAFT et al., Appellants.
L. A. No. 24244.

Supreme Court of California
Oct. 19, 1956.

HEADNOTES

(1) Schools § 2--Legislative Control.
The public schools are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution, and the Legislature is given plenary powers in relation thereto, subject only to constitutional restrictions.
See **Cal.Jur.**, Schools, § 4 et seq.; **Am.Jur.**, Schools, § 7 et seq.
(2) Schools § 2--Legislative Control.
The public school system is of statewide supervision and concern, and legislative enactments thereon control over attempted regulation by local government units.

(3) Schools § 10--School Districts.
School districts are agencies of the state for local operation of the state school system.

(4) Schools § 52--School Property.
The beneficial ownership of property of public schools is in the state.

(5) Schools § 60--School Property--Buildings and Construction.
While a large degree of autonomy is granted school districts by the Legislature, no statute or constitutional provision expressly makes school buildings or their construction any more amenable to regulation by a municipal corporation than structures built and maintained by the state generally for its use.
See **Cal.Jur.**, Schools, § 70 et seq.; **Am.Jur.**, Schools, § 71 et seq.
(6) Municipal Corporations § 237--Local Regulations--Conflicts With Statute.
When the state engages in such sovereign activities as construction and maintenance of its buildings as differentiated from enacting laws for conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation; neither Const., art. XI, § 11, relating to police power of cities and other local subdivisions, nor Gov. Code, §§ 38601, 38660, empowering a city to regulate the construction of buildings within its limits, should be considered as conferring such powers on local government agencies.
See **Cal.Jur.2d**, Buildings, § 6; **Am.Jur.**, Municipal Corporations, § 287.
(7) Schools § 60--School Property--Buildings and Construction.
Construction of school buildings by school districts is not subject to building regulations of a municipal corporation in which the building is constructed, because the state has completely occupied the field by general laws and such regulations conflict with such laws.

(8) Municipal Corporations § 237--Local Regulations--Conflicts With Statute.
A city may not enact ordinances which conflict with general laws on statewide matters.

(9) Schools § 60--School Property--Buildings and Construction.
The Health and Safety Code provisions relating to structural design aimed at procuring buildings less dangerous from the standpoint of earthquakes (§§ 19150, 19151) and requiring that building permits be obtained from the proper city or county officers (§ 19120) do not limit or modify the provisions of the Education Code (§§ 5021, 5041, 18001 et seq.) which set forth a complete system for the construction of school buildings.

(10) Schools § 60--School Property--Buildings and Construction.
Rules and regulations adopted for the construction of school buildings under the Education and Health and Safety Codes (Cal. Administrative Code, tit. 21, ch. 1) may not be interpreted to mean that a city's building regulations must be met in the construction of a school building; they tend more to indicate that school districts could follow such regulations as well as those of the state but are not bound to do so.

(11) Statutes § 112(1)--Construction.
The final construction of a statute is the function of courts.

SUMMARY

APPEAL from a judgment of the Superior Court of Kern County. William L. Bradshaw, Judge. Affirmed.

Action to enjoin a city from enforcing its building ordinance. Judgment for plaintiff affirmed.

COUNSEL
Henry G. Baron, City Attorney, and Allen Grimes for Appellants.
Mack, Bianco, King & Eyherabide and Dominic Bianco for Respondent.
Edmund G. Brown, Attorney General, Richard H. Perry, Deputy Attorney General, Johnson & Stanton, Gardiner Johnson and Thomas E. Stanton, Jr., as Amici Curiae on behalf of Respondent. *179
CARTER, J.
Defendants, Taft, a nonchartered city of the sixth class, its council and chief of police, appeal from a judgment enjoining it from enforcing against plaintiff, a building contractor, its building ordinance.

There is no dispute as to the facts. On April 22, 1955, plaintiff as contractor entered into a contract with Taft Union High School and Junior College District, hereafter called district, a school district duly organized under the state laws, to construct in Taft for the district, a school building for $614,113. The plans and specifications for the building were approved by the State Department of Education and State Division of Architecture. Plaintiff commenced construction which was to be completed in 320 days, but work was "stopped" by Taft, the city, demanding that plaintiff obtain a building permit from it involving a $300 fee and submission to the building ordinance [FN*] of Taft. The district has employed an inspector to assure that the building is constructed according to the plans and specifications. Defendants assert that plaintiff has refused to obtain a permit from the city for the construction of the building and they intend to enforce the penal and civil provisions of the building ordinance of the city.

> FN* Taft by ordinance had adopted the "Uniform Building Code 1952 edition adopted and published by the Pacific Coast Officials Conference in 1952."

The issue is whether a municipal corporation's building regulations are applicable to the construction of a public school building by a school district in the municipality. Taft argues that it had power to adopt police regulations-building construction regulations under the Constitution. [FN†]

> FN† "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." (Cal. Const., art. XI, § 11.)

(1) The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given comprehensive powers in relation thereto. The Legislature shall not pass local or special laws "Providing for the management of common schools." (Cal. Const., art. IV, § 25, subd. 27.) "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, *the Legislature* shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Emphasis added; *id.*, art. IX, § 1.) There *180 is a State Board of Education, an elected superintendent of public instruction and there are county superintendents whose salary and qualifications are prescribed by the Legislature (*id.*, art. IX, §§ 3, 3.1, 7). The proceeds of all public lands that have been or may be granted by the United States to the state and other property is "inviolably" appropriated to the support of the common schools (*id.*,art. IX, § 4) and "Out of the revenue from state taxes for which provision is made in this article, together with all other state revenues, there shall first be set apart the moneys to be applied by the State to the support of the Public School System and the State University." (*Id.*, art. XIII, § 15.) "The *Legislature* shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (Emphasis added; *id.*,art. IX, § 5.) "The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or

college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System *or placed under the jurisdiction of any authority* other than one included within the Public School System. ...

"The Legislature shall provide for the levying annually by the governing body of each county, and city and county, of such school district taxes, at rates not in excess of the maximum rates of school district tax fixed or authorized by the Legislature, as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required in such fiscal year for the support of all schools and functions of said district authorized or required by law." (Emphasis added; *id.*,art. IX, § 6.) A school district may lie in more than one county and may issue bonds. (*Id.*,art. IX, § 6 1/2.) No money shall ever be appropriated for "any school not under the exclusive control of the officers of the public schools. ..." (*Id.*,art. IX, § 8.) "The *Legislature* shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and junior college districts, of every kind and class, and may classify such districts." (Emphasis added; *id.*,art. IX, § 14.) In harmony with those provisions it has been held that the power of the state Legislature over ***181** the public schools is plenary, subject only to any constitutional restrictions. (*Pass School Dist. v. Hollywood City School Dist.*, 156 Cal. 416, 418 [105 P. 122, 20 Ann.Cas. 87, 26 L.R.A.N.S. 485]; *Kennedy v. Miller*, 97 Cal. 429 [32 P. 558]; *Worthington School Dist. v. Eureka School Dist.*, 173 Cal. 154 [159 P. 437]; *Merrill etc. School Dist. v. Rapose*, 125 Cal.App.2d 819 [271 P.2d 522]; see *Woodcock v. Dick*, 36 Cal.2d 146 [222 P.2d 667]; *Seidel v. Waring*, 36 Cal.2d 149 [222 P.2d 669].) (2) The public school system is of statewide supervision and concern and legislative enactments thereon control over attempted regulation by local government units. (*Esberg v. Badaracco*, 202 Cal. 110 [259 P. 730]; *Cloverdale Union H. S. Dist. v. Peters*, 88 Cal.App. 731 [264 P. 273]; *Piper v. Big Pine School Dist.*, 193 Cal. 664 [226 P. 926]; *Kelso v. Board of Education*, 42 Cal.App.2d 415 [109 P.2d 29]; *Kennedy v. Miller*, *supra*, 97 Cal. 429; *Worthington School Dist. v. Eureka School Dist.*, *supra*, 173 Cal. 154; *Board of Education v. Davidson*, 190 Cal. 162 [210 P. 961]; *Phelps v. Prussia*, 60 Cal.App.2d 732 [141 P.2d 440]; *Lansing v. Board of Education*, 7 Cal.App.2d 211 [45 P.2d 1021]; *People v. Mertz*, 2 Cal.2d 136 [39 P.2d 422]; *Gerth v. Dominguez*, 1 Cal.2d 239 [34 P.2d 135].) It is said in *Piper v. Big Pine School Dist.*, *supra*, 193 Cal. 664, 669: "It [the education of the children of the state] is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state." (3) School districts are agencies of the state for the local operation of the state school system. (*Cloverdale Union H. S. Dist. v. Peters*, *supra*, 88 Cal.App. 731, 738; *Board of Education v. Davidson*, *supra*, 190 Cal. 162, 168; *Butler v. Compton Junior College Dist.*, 77 Cal.App.2d 719 [176 P.2d 417]; *Lansing v. Board of Education*, *supra*, 7 Cal.App.2d 211; *Merrill etc. School Dist. v. Rapose*, *supra*, 125 Cal.App.2d 819.) (4) The beneficial ownership of property of the public schools is in the state. It is said in *Pass School Dist. v. Hollywood City School Dist.*, *supra*, 156 Cal. 416, 419: "To the contention that a transfer of ownership thus accomplished works the taking of property without due process of law, it should be sufficient ***182** to point out that in all such cases the beneficial owner of the fee [of public school property] is the state itself, and that its agencies and mandatories-the various public and municipal corporations in whom the title rests - are essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs. The transfer of title without due process of law, of which appellant so bitterly complains, is nothing more, in effect, than the naming by the state of other trustees to manage property which it owns and to manage the property for the same identical uses and purposes to which it was formerly devoted. In point of law, then, the beneficial title to the estate is not affected at all. All that is done is to transfer the legal title under the same trust from one trustee to another. In this sense the trustees of the Hollywood City School District became, by operation of law, successors to the trustees of the Pass School District, as is directly held in *Allen v. School Town of Macey*, 109 Ind. 559 [10 N.E. 578], where it is said: 'It is now a well-recognized legal inference deducible as well from general principles as from the decided cases, that under the constitution and laws of this state, public school property is held in trust for school purposes by the persons or corporations authorized for the time being to control such property, and that it is in the

power of the legislature to provide for a change in the trusteeship of such property in certain contingencies presumably requiring such a change, or, indeed, to change the trustees of that class of property whenever it may choose to do so.'

"Even if such well-established principles could be set aside under the plea that they work injustice in the individual case, this plea here presented is without merit. The state is profoundly interested in the education of its young, but has no deep concern over the personality of the trustees who shall administer this trust, so long as the administration is in the orderly form of law." (See *Fawcett v. Ball*, 80 Cal.App. 131, 136 [251 P. 679]; *Butler v. Compton Junior College Dist.*, 77 Cal.App.2d 719 [176 P.2d 417]; *Kennedy v. Miller*, 97 Cal. 429 [32 P. 558]; *Gridley School Dist. v. Stout*, 134 Cal. 592 [66 P. 785].) (5) While a large degree of autonomy is granted to school districts by the Legislature, we are referred to no statute or constitutional provision which, as far as the question here involved is concerned, expressly makes school buildings or their construction any more amenable to regulation by a municipal corporation than structures which are ***183** built and maintained by the state generally for its use. (6) When it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation. Section 11 of article XI of the state Constitution, *supra*, should not be considered as conferring such powers on local government agencies. Nor should the Government Code sections which confer on a city the power to regulate the construction of buildings within its limits (see Gov. Code, §§ 38601, 38660) be so considered. It is said in *In re Means*, 14 Cal.2d 254, 258 [93 P.2d 105], holding that a state employee working on a state structure in a city need not meet the requirements of a city charter provision: "If one who has been employed by the state may not work on state property within a municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty. ...

"Turning to the contentions of the respondent that the regulation of plumbing is a municipal affair, the rule to be applied is not entirely a geographical one. Under certain circumstances, an act relating to property within a city may be of such general concern that local regulation concerning municipal affairs is inapplicable. ... For example, where one of the city's streets has been declared by an act of the legislature to be a secondary highway, the improvement of that street is not a municipal affair within the meaning of the Constitution. ... Also, regulations prescribed by charter or ordinance of a city requiring that the work of altering and improving buildings be subject to local supervision have been held inapplicable to state building. (*City of Milwaukee v. McGregor*, 140 Wis. 35 [121 N.W. 642, 17 Ann.Cas. 1002].)

"In the case of *Kentucky Institution for Education of Blind v. City of Louisville*, 123 Ky. 767 [97 S.W. 402, 8 L.R.A.N.S. 553], the city attempted to enforce an ordinance relating to fire escapes with respect to a state institution for the blind. The court held the ordinance inapplicable, stating: 'The principle is that the state, when creating municipal governments does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control.***184** The municipal government is but an agent of the state, not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the state. It is competent for the state to retain to itself some part of the government even within the municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities. How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it cannot have.' " (See also *Board of Education v. City of St. Louis*, 267 Mo. 356 [184 S.W. 975]; *Salt Lake City v. Board of Education*, 52 Utah 540 [175 P. 654]; 31 A.L.R. 450.)

Pasadena School Dist. v. Pasadena, 166 Cal. 7 [134 P. 985, Ann.Cas. 1915B 1039, 47 L.R.A.N.S. 892], fails to consider the factors above mentioned and insofar as it is inconsistent with this opinion it is overruled. The question here considered was not involved in *Roman Catholic etc. Corp. v. City of Piedmont*, 45 Cal.2d 325, 332-333 [289 P.2d 438].

(7) Moreover, in connection with the foregoing and as an additional ground why the construction of school buildings by school districts are not subject to the building regulations of a municipal corporation in which the building is constructed, is that the state has completely occupied the field by general laws, and

such local regulations conflict with such general laws, when we consider the activity involved. (8) A city may not enact ordinances which conflict with general laws on statewide matters. (*Simpson v. City of Los Angeles*, 40 Cal.2d 271 [253 P.2d 464]; *Pulcifer v. County of Alameda*, 29 Cal.2d 258 [175 P.2d 1]; ***Ex parte*** *Daniels*, 183 Cal. 636 [192 P. 442, 21 A.L.R. 1172]; *Atlas Mixed Mortar Co. v. City of Burbank*, 202 Cal. 660 [262 P. 334]; *Ganley v. Claeys*, 2 Cal.2d 266 [40 P.2d 817]; *In re Murphy*, 190 Cal. 286 [212 P. 30]; *In re Mingo*, 190 Cal. 769 [214 P. 850]; *Natural Milk etc. Assn. v. City etc. of San Francisco*, 20 Cal.2d 101 [124 P.2d 25]; *Pipoly v. Benson*, 20 Cal.2d 366 [125 P.2d 482, 147 A.L.R. 515]; *Tolman v. Underhill*, 39 Cal.2d 708 [249 P.2d 280].) The particular situation presented and discussed in those cases is not helpful. *In re Means, supra*, 14 Cal.2d 254, herein discussed is most pertinent as it involves the attempted regulation of a state activity by a city, as distinguished from regulations of the members of the public.

The Education Code sets out a complete system for the construction of school buildings. The Legislature there declares ***185** that it is in the interest of the state to aid school districts in the construction of school buildings for the maintenance of the public school system inasmuch as the system is of general concern and the education of the children is an obligation and function of the state. (Ed. Code, §§ 5021, 5041.)The governing board of any school district shall manage and control the school property within its district (*id.*,§ 18001). It (the board) shall furnish and repair the school property. (*Id.*, § 18002.) It shall provide as a part of school buildings patent flush water closets for the use of the pupils (*id.*, § 18009). It may repair old buildings by day's labor or by force account (*id.*, §§ 18055, 18057). The State Department of Education shall: "Establish standards for school buildings," review and approve all plans and specifications for buildings and disapprove those not meeting the standards, furnish plans, specifications and "building codes," and make rules and regulations to carry out those activities (*id.*, §§ 18102, 18101). "The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse (*id.*, § 18151). Except in cities having a board of education the county superintendent shall pass upon all plans for school buildings and plans shall be submitted to him. "The Division of Architecture of the Department of Public Works under the police power of the State shall supervise the construction of any school building or, if the estimated cost exceed four thousand dollars ($4,000), the reconstruction or alteration of or addition to any school building, for the protection of life and property." (*Id.*, § 18191.) " 'Construction or alteration' as used in this article includes any construction, reconstruction, or alteration of, or addition to, any school building." (*Id.*, § 18193.) "The Division of Architecture shall pass upon and approve or reject all plans for the construction or alteration of any school building. To enable it to do so, the governing board of each school district and any other school authority before adopting any plans for a school building shall submit the plans to the Division of Architecture for approval, and shall pay the fees prescribed in this article." (*Id.*, § 18194.) "Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Division of Architecture, shall be first had and obtained." (*Id.*, § 18195.) "In each case the application for approval of the plans shall be ***186** accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Division of Architecture. " (*Id.*, § 18196.) All plans and specifications shall be prepared by a duly state licensed architect or engineer and the supervision of the work shall be by a duly licensed person. (*Id.*, § 18199.) No contract for construction is valid and no public money shall be paid for any work or materials furnished thereunder " unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Division of Architecture and unless the approval thereof in writing has first been had and obtained from the division." (*Id.*, § 18200.) Progress reports must be made to the division (*id.*, § 18201). "The State Division of Architecture shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, *and the public.*The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Division of Architecture. The inspector shall act

under the direction of and be responsible to the architect or structural engineer." (Emphasis added; *id.*, § 18203.) The division may adopt rules and regulations to carry out its duties and a violation of the provisions is a felony (*id.*, §§ 18202, 18204). If the supervisor of health of any school district notes any defect in "plumbing, lighting, or heating," he shall report to the district and if it does not act, to the county superintendent. (*Id.*, § 18221.) Each building, if two or more stories, shall have fire escapes (*id.*, § 18222).

(9) It is urged, however, that the foregoing provisions must be read in the background in which they were adopted, that is, that some of them were placed in the Education Code from the Field Act adopted in 1933 (Stats. 1933, ch. 59) and must be construed with the Riley Act of 1933 (Stats. 1933, ch. 601) now in the Health and Safety Code, sections 19100- 19170. The Riley Act provides that all buildings (with certain exceptions Health & Saf. Code, § 19100) must meet certain standards which are set forth (*id.*, §§ 19150, 19151).***187** Building permits must be obtained from the proper city or county officers charged with the enforcement of laws regulating construction (*id.*, § 19120). Any city or county may establish construction standards higher than those established by sections 19150 and 19151 of the Health and Safety Code. Plans and specifications for buildings shall be filed with the application for a building permit (*id.*, § 19132). Both the Field and Riley acts were enacted as urgency measures, the urgency being stated to be the series of earthquakes occurring shortly prior thereto (Stats. 1933, ch. 59, § 9; 1933, ch. 601, § 8.) We do not believe, however, that the Health and Safety Code provisions (Riley Act) limit or modify the provisions of the Education Code (Field Act) above discussed. The former deal with structural design aimed at procuring buildings less dangerous from the standpoint of earthquakes (Health & Saf. Code, §§ 19150, 19151) while the latter, as above pointed out, are broad and comprehensive including the whole field of construction regulations. The urgency that impelled the Legislature to enact both as urgency measures may have been the same but the scope is clearly different. Hence the provisions in the former providing for more stringent local regulations are not applicable to the latter.

Reference is made to rules and regulations, past and present, adopted for the construction of school buildings under the Education and Health and Safety Codes. (Cal. Administrative Code, tit. 21, Public Works, Division of Architecture, chap. 1, subchap. 1.) The purpose of the rules (we refer to the rules now in existence) is to protect lives and property of the people by regulating the design and construction of public school buildings so that, in addition to the normal loads to which such buildings are subjected, they shall resist future earthquakes. (Tit. 21, subchap. 1, group 1, art. I, § 1.) The rules are intended to establish "reasonable standards and minimum requirements " for the construction of such buildings in order to attain the requisite stability to withstand loads and forces "and to insure safety of construction " (*id.*, § 2). The detailed regulations set forth in sections 101 to 1206 have been adopted as a basis for the approval of plans and specifications. "It is not the intention to limit the ingenuity of the designer nor to interfere with existing building rules and regulations where such rules and regulations are more stringent. Where the designer desires to depart from the methods of analysis set up by these rules and regulations, it will be necessary that he submit his method in detail ***188** together with complete information including computations and test data covering the design in question. Permission to deviate from these rules and regulations is optional with the Division of Architecture and is dependent upon the division being satisfied that the structural members or portions of the building involved would provide at least such safety as would have been obtained had these rules and regulations been adhered to strictly." (*Id.*, § 70.) "Regulations and design values established in these rules and regulations are minimum requirements. Nothing herein contained shall be interpreted to interfere with or to waive the requirements of applicable local or state building laws or ordinances where the requirements of those laws are more stringent than the requirements of these rules and regulations." (*Id.*, § 115.) However, it is also provided that: "No rule or regulation shall be construed to deprive the Division of Architecture of its right to exercise the powers conferred upon it by law, or to limit the division in such enforcement of the act as is necessary to secure safety of construction and the proper administration of the law." (*Id.*, § 5.)

(10) It is very doubtful that those rules indicate an intention to interpret the Education Code sections to mean that a city's building regulations must be met in the construction of a school building. They tend more to indicate that the school districts could follow such regulations as well as those of the state but are not bound to do so. (11) In any event, since the final construction of a statute is the function of the courts

(2 Cal.Jur.2d, Administrative Law, § 17), we hold the statutes here involved should not be construed as requiring a school district to comply with the building regulations of a city.

There is no necessity for comparing in detail Taft's building code and the numerous comprehensive building regulations contained in the Education Code and the rules and regulations of the Division of Architecture, for as we have seen the state has occupied the field. As said in *In re Means, supra,* 14 Cal.2d 254, 258, 260, in speaking of the effect of a city ordinance, establishing standards for plumbers, on a state employee in a city, the state civil service system provides a comprehensive plan for the selection of state employees and although the city ordinance does not purport to prescribe the conditions for state employment, "If one who has been employed by the state may not work on state property within a ***189** municipality without the consent of the municipality obtained after examination, the city has, in effect, *added to the requirements for employment by the state, and restricted the rights of sovereignty.* ...

"Although the legislature has enacted no statute regulating plumbing, if the city's ordinance is a valid exercise of power, then one whom the state has examined and found eligible for employment as a plumber and who has later entered the state civil service may be unable to work on state property because he cannot pass the examination of a city health officer or licensing board. The result is a direct conflict of authority. Either the local regulation is ineffective or the state must bow to the requirement of its governmental subsidiary. Upon fundamental principles, that conflict must be resolved in favor of the state." (Emphasis added.) The same comments apply to the references in the instant construction contract and specifications that the building is to be constructed in compliance with local regulations.

The judgment is affirmed.

Gibson, C. J., Shenk, J., Traynor, J., Schauer, J., Spence, J., and McComb, J., concurred.
Cal.
Hall v. City of Taft
47 Cal.2d 177, 302 P.2d 574

END OF DOCUMENT

Districts A and B are receiving a reduced tax allocation due to the detachment proceedings (§ 99). They are no longer serving the area in question for which they received state assistance payments in 1978–1979. This area should therefore not be included in their calculations for Fund contributions.

District C, on the other hand, is now receiving property tax revenues previously allocated to districts A and B. Its area benefitted from state assistance payments in 1978–1979, and contributions to the Fund have been made based upon tax assessments in its area. We believe that district C has the responsibility to continue the Fund contributions made by districts A and B for its area. The ratios, state assistance payments, and current allocations based upon assessments in the two separate territories should be calculated and applied to district C's total allocation.

We realize that section 98.6 is complex and that its terms are subject to varying interpretations. We have sought to construe the statutory language in a reasonable and common sense manner. The Legislature's program for flexibility and a measure of local control over the property tax allocations of special districts should not be unreasonably restricted or expanded due to district reorganizations. Our construction of section 98.6 is consistent with the limitations and purposes of the Fund as originally envisioned by the Legislature. Any possible hardships resulting from a district having to contribute to the Fund may be addressed by the board of supervisors at the time of redistribution.

In answer to the question presented, therefore, we conclude that special districts are required to contribute to the Fund to the extent that their territories received state assistance payments for the 1978–1979 fiscal year.

Opinion No. 86-603—April 15, 1987

SUBJECT: APPLICATION OF LABOR CODE § 1771 PREVAILING WAGE PROVISIONS—The prevailing wage provisions of Labor Code section 1771 apply to the employees of an engineering firm which contracts with a city to perform the duties of city engineer, except with respect to such duties which do not qualify as a public work.

Requested by: MEMBER OF THE CALIFORNIA ASSEMBLY

Opinion by: JOHN K. VAN DE KAMP, Attorney General
Anthony S. Da Vigo, Deputy

The Honorable Richard E. Floyd, Member of the California Assembly, has requested an opinion on the following question:

Do the prevailing wage provisions of Labor Code section 1771 apply to the employees of an engineering firm which contracts with a city to perform the duties of city engineer?

CONCLUSION

The prevailing wage provisions of Labor Code section 1771 apply to the employees of an engineering firm which contracts with a city to perform the duties of city engineer, except with respect to such duties which do not qualify as a public work.

ANALYSIS

We are advised that a city has entered into a contract with a private engineering firm to perform, on an extended basis, all or a portion of those duties which would ordinarily be performed by a city engineer. The firm is required upon written authorization of the city manager to provide all necessary consulting engineering services needed for the preparation of special reports, investigations and studies, plan checking, surveying and inspections, the preparation of plans, specifications and cost estimates and any other special municipal projects or programs requiring specialized consulting services.

We are asked whether the prevailing wage provisions of Labor Code section 1771 apply to such surveyors and related employees. The inquiry assumes that the work in question is a "public work" within the meaning of that section, as defined in section 1720 of said code:

> "As used in this chapter 'public works' means:
>
> "(a) Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority.
>
> "(b) Work done for irrigation, utility, reclamation and improvement districts, and other districts of this type. 'Public work' shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.
>
> "(c) Street, sewer or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether such political subdivision or district operates under a freeholder's charter or not.
>
> "(d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.
>
> "(e) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds."

We have previously considered in another context the meaning of "public works" as it relates to such engineering services. (63 Ops. Cal. Atty. Gen. 501, 504–508 (1980).) It was there observed that each contract must be separately reviewed to determine whether the work in question qualifies as such. (*Id.*, 506–507.) That similar distinctions must be drawn with regard to the application of prevailing wage requirements to engineering services is indicated, for example, by the specifications of Title 8, California Administrative Code, section 16001, subdivision (c), providing that

certain field survey work is subject to such requirements "when it is integral to the specific public works project in the design, preconstruction, or construction phase." A letter dated March 30, 1978 from the Director of Industrial Relations to Public Agency Awarding Bodies contained the following administrative interpretation:

> "As the person authorized by the Legislature to determine prevailing wage rates, I have determined that surveyors are included in the prevailing wage law pertaining to public works, § 1720 *et seq.* and § 1770 *et seq.* of the Labor Code.
>
> "A general determination has been made that when a firm performs engineering, surveying, and photogrammetry work for preparation of any plans and specifications for an awarding body under contract, the work of the surveyors, or those assisting the surveyors to establish field control lines, is to be paid at prevailing wage rates according to Part 7 of the Labor Code which deals with 'Public Works and Public Agencies.'
>
> "Surveying, whether performed in the preparation or construction stage, is a necessary prerequisite and integral part of construction without which the work could not proceed and is performed by the type of classification of worker intended to be covered by the Act (§ 1723 and § 1772 of the Labor Code).
>
> "Covered work includes all field survey work related to the engineering phase of a public works project, as well as to the construction phase of a public works project. The engineering phase includes field survey work for feasibility and design. Covered work does not include field survey work, such as general land surveying and mapping, related to the planning function of agencies covered by the prevailing wage law; nor does it include office work."

It is not the purpose of this discussion to factor analyze all of the performance dimensions of a city engineer to determine which would or would not, if performed by a private concern pursuant to contract, qualify as a public work. By its own terms, Labor Code section 1771 does not apply to work which does not so qualify. With respect to work that does so qualify, that section provides:

> "Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.
>
> "*This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own* forces. This section is applicable to contracts let for maintenance work." (Emphasis added.)

Hence, the issue arises as to whether the work in question is "performed under

contract" or "carried out by a public agency with its own forces." The prevailing wage requirement applies in the former but not the latter circumstance.

In its contract with the city the firm is characterized as "the City Engineer." Reference is made to Government Code section 36505, providing that

> "The city council shall appoint the chief of police. It may appoint a city attorney, a superintendent of streets, *a civil engineer*, and such other subordinate officers or employees as it deems necessary." (Emphasis added.)

Hence, it is suggested that the prevailing wage law does not apply where the duties in general of a city engineer are performed on an ongoing basis by a private firm acting as city engineer, as distinguished from an independent contractor, and that its employees are therefore the city's "own forces." We shall first consider whether the contractual designation "City Engineer" is determinative of one's status as an appointee to public office under Government Code section 36505, *supra*, as distinguished from a contractor under section 37103 of said code.

A city may enter into a contract with an engineer for specialized services. (Gov. Code, § 37103.) Such a contract does not render the engineer a city officer. (28 Ops. Cal. Atty. Gen. 362, 364 (1956).) On the other hand, a contract for services is not inherently inconsistent with public office, where the contractor has been duly appointed and taken the required oath. (*Id.*) The status of such a contractor must be determined by the duties and powers conferred, and not solely by contractual references as "city engineer" or other appointive terms in the contract. (*Id.*, Staheli v. City of Redondo Beach (1933) 131 Cal. App. 71, 79.) In the latter case the court construed a contract providing in part that Staheli "is hereby appointed to act and fill the duties of the City Engineer . . ." (*id.*; 78–80):

> "In the case of Kennedy v. City of Gustine, 199 Cal. 251 [248 Pac. 910], we find a situation where the board of trustees of a city of the sixth class appointed C. C. Kennedy 'as city engineer, his compensation to be seven per cent of cost of construction work.' The agreement under which plaintiff in that case went to work provided:
>
> " 'That for and in consideration of the compensation to be paid by the party of the first part to the party of the second part at the times and in the manner hereinafter provided, the party of the first part hereby employs said party of the second part as City Engineer of the said City of Gustine, for the purpose of performing the engineering work and supervising the construction of certain street improvements in said City of Gustine, namely: The construction of curbs, sidewalks and pavement upon (naming certain streets) during the present and next succeeding calendar year'. Construing this agreement and determining liability thereunder, the court said (p. 255): 'It is clear, however, that the plaintiff was not an officer of the city, but that he was employed, not to discharge the general duties of the office of city engineer, but only the particular engineering work specified in the contract. . . . Any reference to him in the minutes or the contract or in the evidence as "city engineer" is not controlling. Whether a position, or office, is a public office depends "not upon what the particular office in question may be

called, nor upon what a statute may call it, but upon the power granted and wielded, the duties and functions performed and other circumstances which manifest the true character of the position and make and mark it a public office, irrespective of its formal designation'." (Citing Coulter v. Pool, 187 Cal. 181, 186 [201 Pac. 120], and other California cases.)

"Although respondent was employed to fill the duties of the city engineer of Redondo Beach and resolution No. 719 provided as his compensation the sum of $175 per month as a *retaining fee* for general city engineering and city engineering advice, we are not convinced that the use of those words constituted him individually a city officer, particularly since he was not definitely appointed city engineer and in view of the fact that almost every conceivable kind of *city engineering work* as popularly understood *is left by the same resolution in the balance to await future development or possibly future disagreement*. Since respondent was engaged on a retainer basis to give general engineering advice in the first instance, and later, if required, to give special advice or special service *on compensation to be determined*, it seems reasonable to say that from this resolution arose a private contract with an individual rather than the creation of a public office." (Last two emphases added.)

Similarly, with regard to the matter under consideration, it is undisputed that (1) the firm is retained by and subject to the terms and conditions of a contract, (2) services are to be performed only upon the written authorization of the city manager, and (3) the method of compensation for services rendered by the firm is to be approved for each project by the city manager. Thus, as in the Staheli case, each project is left to await future development or possible future disagreement, for compensation to be determined.

Further problems arise with regard to the appointment of a corporation as a public officer. Unless otherwise provided, each public officer must first take and subscribe the constitutional oath. (Cal. Const., art. XX, § 3; Gov. Code, §§ 1360 & 36507.) In addition, a person who is not 18 years of age and a citizen of this state at the time of election or appointment is incapable of holding a civil office. (Gov. Code, § 1020.) While a corporation may be characterized as a citizen of the state of its creation (Keystone Driller Co. v. Superior Court (1903) 13 8 Cal. 738, 742), it is so considered only for the purpose of protecting the property rights of the incorporators (County of San Mateo v. Southern Pac. R. Co. (CC Cal. 1882) 13 F. 722, 747, *writ dism.* 116 U.S. 138).[1]

The salient fact remains, in any event, that the surveyors and other personnel who perform such services are employed and compensated by the firm. Whether or not the firm may be deemed a public officer, employee, or agent, it is not the city. In our view, therefore, the argument propounded is inconsistent with the plain meaning of section 1771 and with the nature and purpose of its requirements.

The prevailing wage prescription of section 1771 is contained in the first sentence

[1] Still another issue concerns the meaning of "business activity" under Corporations Code sections 206 and 207, for purposes of holding public office.

which applies unequivocally to "*all* workers employed on public works." The second sentence is an exception relating to "work carried out by a public agency with its own forces." This exception is specifically limited to work done by force account (Bishop v. City of San Jose (1969) 1 Cal. 3d 56, 65; O.G. Sansone Co. v. Department of Transportation (1976) 55 Cal. App. 3d 4 34, 459), i.e., by its own employees as distinguished from work performed pursuant to contract with a commercial firm for similar services (see, Webster's Third New Internat. Dict. (1961) p. 887; Jackson v. Pancake (1968) 266 Cal. App. 2d 307, 311).

Manifestly, employees of the firm are not those of the city. In this regard it should be recalled that statutory exceptions should be narrowly construed. (Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Contr. (1968) 261 Cal. App. 2d 181, 189; 66 Ops. Cal. Atty. Gen. 24, 26 (1983).) Further, expressly excluded from the exception is "work performed under contract." Hence, the rule applies that where statutory language is clear and unambiguous, there is no need for construction and the courts should not indulge in it. (Board of Supervisors v. Lonergan (1980) 27 Cal. 3d 855, 866; 66 Ops. Cal. Atty. Gen. 217, 221–222 (1983).)

Nor would the exemption of the firm's employees be consistent with the nature and purpose of the prevailing rate standards. With respect to such purpose, the court stated in O.G. Sansone Co. v. Department of Transportation, *supra*, 55 Cal. App. 3d at 458:

> "Little has been written in judicial opinions concerning the purpose of the California legislation. However, cases have expounded on the purpose of the Davis-Bacon Act (40 U.S.C. 276a et seq.) The Supreme Court stated in U.S. v. Binghamton Construction Co., 347 U.S. 171, at pages 176–177: 'The language of the [Davis-Bacon] Act and its legislative history plainly show that it was not enacted to benefit contractors, but rather to protect their employees from substandard earnings by fixing a floor under wages on Government projects.' And in International U. of Operating Eng. Local 627 v. Arthurs (W.D. Okla. 1973) 355 F. Supp. 7, at page 8, it was stated: 'The purpose of the Davis-Bacon Act is to provide protection to local craftsmen who were losing work to contractors who recruited labor from distant cheap-labor areas. S.Rept. 963, Mar. 17, 1964 (to accompany H.R. 6041), 1964 U.S. Code Congressional and Administrative News, pp. 2339, 2340. Some contractors pay wages according to collective bargaining agreements. But even though these contractors usually are required to pay higher wage scales, they can still compete with nonunion contractors for public contract work because of the Davis-Bacon Act prevailing wage scale provision. Noncompliance with the Davis-Bacon Act makes it impossible for all contractors to compete. There is thus injury to the laborers and mechanics, as well as injury to contractors and labor organizations."
>
> "It has been said that the provision for payment of prevailing wages on state construction works serves as a public policy in that the state will benefit from 'the superior efficiency of well-paid labor working during reasonable hours' and that such benefit justifies the employment of men on 'less

favorable terms than could be secured by the stress of competition.' (65 Am.Jur.2d, Public Works and Contracts, § 199, p. 87.)"

If exempt, workers employed and compensated by the firm would enjoy neither the benefit of a salary established by law, nor of a salary subject to the constraints of section 1771. We perceive no such legislative oversight.

It is concluded that the prevailing wage provisions of Labor Code section 1771 apply to the employees of an engineering firm which contracts with a city to perform the duties of city engineer, except with respect to such duties which do not qualify as a public work.

Opinion No. 86-702—April 15, 1987

SUBJECT: AUTHORITY TO ESTABLISH SALARIES OF CALIFORNIA HOUSING FINANCE AGENCY EMPLOYEES—The California Housing Finance Agency does not have the authority to establish the salaries of its employees without the approval of the Department of Personnel Administration.

Requested by: DIRECTOR, DEPARTMENT OF PERSONNEL ADMINISTRATION

Opinion by: JOHN K. VAN DE KAMP, Attorney General
Anthony S. Da Vigo, Deputy

The Honorable James D. Mosman, Director, Department of Personnel Administration, has requested an opinion on the following question:

Does the California Housing Finance Agency have the authority to establish the salaries of its employees without the approval of the Department of Personnel Administration?

CONCLUSION

The California Housing Finance Agency does not have the authority to establish the salaries of its employees without the approval of the Department of Personnel Administration.

ANALYSIS

The present inquiry concerns the authority for the fixing of the salaries of employees of the California Housing Finance Agency. Specifically, it must be determined whether the establishment of such salaries by the agency is subject to the approval of the Department of Personnel Administration. The department's authority is found in Government Code section 19825, subdivision (a):

"*Notwithstanding any other provision of law*, whenever any state agency is authorized by special or general statute to fix the salary or compensation of

Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and Respondent, v. FRANCIS V. SEE, Objector and Appellant.
Cal. 2001.

Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and Respondent,
v.
FRANCIS V. SEE, Objector and Appellant.
No. S087881.

Supreme Court of California
June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he

disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.
[See 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, §§ 153, 153A, 153B.]
(2) Statutes § 29--Construction--Language--Legislative Intent.
In statutory construction cases, a court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes § 46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.
When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.
A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.
A trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.
Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL
Kitchen & Turpin, David C. Turpin; Law Office of Herb Fox and Herb Fox for Objector and Appellant.
Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.
BAXTER, J.
Section 6452 of the Probate Code (all statutory

references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory ***908** construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, [FN1] objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" [FN2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as $5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold ***909** divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two

children-Margaret and Daniel-as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent ...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions-section 6450, section 6452, and section 6453-must be considered. ***910**

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. *Acknowledgement*

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our

fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [*911105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*;*People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*,25 Cal.4th at p. 272; *People v. Lawrence*, *supra*,24 Cal.4th at pp. 230-231.)If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*,25 Cal.4th at p. 272.)In such cases, we " ' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge " is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit"].) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly " confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. [FN3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

> FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, ***912** test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*,25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental

acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation ***913** of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigaran* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346](*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child " and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano*, *supra*,51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute.(*Lozano*, *supra*,51 Cal.App.4th at p. 848.)*Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing ***914**Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano*, *supra*,51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly

acknowledging it as his own." (See Civ. Code, former § 230.) [FN4]Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

> FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975, ch. 1244, § 8, p. 3196.)
> In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers*, *supra*,96 Cal. at p. 577.)We therefore employed the word's common meaning, which was " 'to own or admit the knowledge of.' " (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [330 P.2d 452]; see *Estate of Gird*, *supra*,157 Cal. at pp. 542-543), but, as discussed, the word retains virtually the same meaning in general usage today-"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his ***915** one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird*, *supra*,157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird*, *supra*,157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.)Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. [FN5](*Wong v. Young*, *supra*,80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young*, *supra*,80 Cal.App.2d at p. 394.)

> FN5 Section 255 of the former Probate Code provided in pertinent part: " 'Every

> illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock ....' " (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the ***916** same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452. [FN6]

> FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayers*, *supra*,96 Cal. 532,*Estate of Wilson*, *supra*,164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*,96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.)Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*,96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*,164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.)Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. ***917**

In *Estate of Maxey*, *supra*,257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare.(*Id.* at p. 397.)The father also, in the presence of others, had asked for permission to

take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.)As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops " (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.)(4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, *918 257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird*, *supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives,

family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.)In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity. " (*Id.* at p. 276.)***919**

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, *supra*,43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio*, *supra*,43 Cal.App.3d at pp. 416-417.)Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock. [FN7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such ***920** exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

> FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that

> parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child. " (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*,7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. [FN8]*921

> FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262-263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. *Requirement of a Natural Parent and Child Relationship*

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. [FN9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

> FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out

> the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, [FN10] if a court order was entered during the father's lifetime declaring paternity. [FN11] (§ 6453, subd. (b)(1).)

> FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664."

> FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he ***922** argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33](*Weir*);*Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir*, *supra*,59 Cal.App.4th at pp. 1516-1517, 1521.)Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, [FN12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

> FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941

bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. ***923** It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762](*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease*'s reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease, supra*,201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. ***924**

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir, supra*,59 Cal.App.4th at p. 1521.)Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child

relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) " 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.' " (*Estate of De Cigaran, supra,*150 Cal. at p. 688.)We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. ***925BROWN, J.**

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession-to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own " in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. ***926**

Cal. 2001.
Estate of Griswold
25 Cal.4th 904, 24 P.3d 1191, 108 Cal.Rptr.2d 165, 01 Cal. Daily Op. Serv. 5116, 2001 Daily Journal D.A.R. 6305

END OF DOCUMENT

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 588

UNFINISHED BUSINESS

Bill No: SB 588
Author: Burton (D)
Amended: 9/6/01
Vote: 21

SENATE LABOR & IND. RELATIONS COMMITTEE : 5-3, 4/25/01
AYES: Alarcon, Figueroa, Kuehl, Polanco, Romero
NOES: Margett, McClintock, Oller

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 25-13, 5/21/01
AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Karnette, Kuehl, Machado, Murray, O'Connell, Ortiz, Peace, Perata, Polanco, Romero, Scott, Sher, Soto, Torlakson, Vasconcellos, Vincent
NOES: Ackerman, Battin, Brulte, Haynes, Johannessen, Knight, Margett, McClintock, McPherson, Monteith, Morrow, Oller, Poochigian

ASSEMBLY FLOOR : 50-28, 9/10/01 - See last page for vote

SUBJECT : Prevailing wages: payroll records

SOURCE : California-Nevada Conference of Operating Engineers

DIGEST : This bill permits federally-recognized joint labor-management committees access to certified payrolls on public works projects, and permits committees to seek civil court action to remedy prevailing wage violations.

CONTINUED

Assembly amendments (a) provide that in addition to social security numbers, "names" should also be deleted from the records provided to the committees, (b) clarify the civil action procedures, and (c) provide that courts may award restitution.

ANALYSIS : Existing state law requires the payment of prevailing wages to workers employed by private contractors on public works projects valued at $1,000 or more. When an awarding body decides to advertise a public works contract, it must obtain the applicable prevailing wage rates from the Director of the Department of Industrial Relations (DIR). The Divisions of Labor Standards Enforcement (DLSE) and Apprenticeship Standards (DAS) enforce various requirements.

Contractors and subcontractors are required to prepare a certified payroll containing specified information and to make the payroll available for inspection or to furnish it upon request to DLSE, DAS, and to a representative of the awarding body. Records obtained by state officials are open for public inspection, but employee names and other identifying information such as addresses, and social security numbers are deleted from view.

Existing federal law provides for the establishment of industry wide labor-management committees which have been jointly organized for, among other things, advocating industry practices in compliance with various laws.

This bill provides that a federally recognized joint labor-management committee may obtain a copy of a certified payroll from a contractor on a public works project, but with names and social security numbers deleted. If the committee discovers unpaid prevailing wages or fringe benefits due, and related penalties, it may file a civil action to collect them. Courts may award restitution to employees and attorney's fees and costs to the committee.

Prior legislation

This bill is similar to AB 2783 (Villaraigosa) of 2000 which was vetoed by the Governor. The Veto Message said,

in part:

"?.The bill contains no provisions that limit the uses to which joint labor management committees may put the personal information with which they are entrusted?.(T)he release of personal information to a joint labor-management committee requires neither the knowledge nor the consent of affected employees. Although the obvious intent of this legislation is that the information be utilized solely for the purpose of detecting the underpayment of workers on public works projects, joint labor-management committees are not bound to adhere to this goal, and the privacy of the affected employees is in no way assured. This is not the case with the public agencies charged with the enforcement of California's labor laws."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: No

The Assembly Appropriations Committee analysis concluded that the fiscal effect of this bill was negligible.

SUPPORT : (Verified 5/14/01) (prior to 9/6 amendments)

California-Nevada Conference of Operating Engineers (source)
State Building and Construction Trades Council of California
California Labor Federation AFL-CIO
California Chamber of Commerce

OPPOSITION : (Verified 5/14/01)

Associated Builders and Contractors
California Manufacturers and Technology Association

ARGUMENTS IN SUPPORT : Proponents including the California-Nevada Conference of Operating Engineers, argue that union representatives or joint labor-management committees are unable to ascertain if the contractor is misclassifying and underpaying skilled workers when they seek to discover compliance with prevailing wage laws. This bill would provide important new mechanisms to assist the state in enforcing the public works law.

□

Supporters refer to estimates from the State Task Force on the Underground Economy that estimates between $2 billion and $5 billion in payroll and revenue goes unreported in the construction industry each year.

Because DLSE has only 20 field investigators and six

auditors in the public works unit, that agency cannot adequately enforce the law on more than 22,000 public works projects each year. Therefore, unethical contractors understand that the odds of being caught cheating on wages and payroll taxes is minimal. This bill will strengthen enforcement by providing committees with access to payroll records and a direct cause of action to enforce prevailing wage laws.

ARGUMENTS IN OPPOSITION : Opponents state that DLSE is more than capable of checking payroll records to guard against any duplications or misclassification of employees. Under the current administration, the DLSE has received major budget increases, as well as additional augmentations to increase staffing which should be sufficient to fulfill their duties. They see no empirical evidence that DLSE has failed to perform its current duties in a timely or satisfactory manner.

Opponents question the appropriateness of joint labor-management committees getting involved in prevailing wage enforcement activities. They argue that the purpose of these private committees is to promote a private benefit, not a public one.

The Associated Builders and Contractors argue that the committees endorsed and fostered by this bill represent unions and unionized businesses for the purpose of recruiting union membership. Also, by only deleting social security numbers, enormous privacy rights violations would still exist. Workers names and addresses should not be subject to public release for union recruiting of non-union contractors.

ASSEMBLY FLOOR :
AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Chu, Cohn, Corbett,

Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Horton, Jackson, Keeley, Kehoe, Koretz, Liu, Longville, Lowenthal, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Hertzberg
NOES: Aanestad, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Dickerson, Harman, Hollingsworth, Kelley, La Suer, Leach, Leonard, Leslie, Maldonado, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti, Richman, Runner, Strickland, Wyman,

Zettel

NC:sl 9/12/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CALIFORNIA

★ OFFICIAL VOTER ★ INFORMATION GUIDE

GENERAL ELECTION DATE

Tuesday, November 5, 2002

CALIFORNIA SECRETARY OF STATE

PROP 47 **Kindergarten-University Public Education Facilities Bond Act of 2002.**

Analysis by the Legislative Analyst

BACKGROUND

Public education in California consists of two distinct systems. One system includes local school districts that provide elementary and secondary (kindergarten through 12th grade, or "K–12") education to about 6.1 million pupils. The other system (commonly referred to as "higher education") includes local community colleges, the California State University (CSU), and the University of California (UC). The three segments of higher education provide education programs beyond the 12th grade to about 2.3 million students.

K–12 Schools

School Facilities Funding. The K–12 schools receive funding for construction and renovation of facilities from two main sources—the state and local general obligation bonds.

- ***State Funding.*** The state, through the School Facility Program (SFP), provides money for school districts to buy land and to construct, renovate, and modernize K–12 school buildings. Districts receive funding for construction and renovation based on the number of pupils who meet the eligibility criteria of the program. The cost of school construction projects is shared between the state and local school districts. The state pays 50 percent of the cost of new construction projects and 60 percent of the cost for approved modernization projects. (Local matches are not necessary in so-called "hardship" cases.) The state has funded the SFP by issuing general obligation bonds. Over the past decade, voters have approved a total of $11.5 billion in state bonds for K–12 school construction. About $550 million of these funds remain available for expenditure.
- ***Local General Obligation Bonds.*** School districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last ten years, school districts have received voter approval to issue more than $23 billion of general obligation bonds.

Although school facilities have been funded primarily from state and local general obligation bonds, school districts also receive significant funds from:

- ***Developer Fees.*** State law authorizes local governments to impose developer fees on new construction. These fees are levied on new residential, commercial, and industrial developments. Statewide, school districts report having received an average of over $300 million a year in developer fees over the last ten years.
- ***Special Local Bonds (Known as "Mello-Roos" Bonds).*** School districts may form special districts in order to sell bonds for school construction projects. (These special districts generally do not encompass the entire school district.) The bonds, which require two-thirds voter approval, are paid off by charges assessed to property owners in the special district. Statewide, school districts have received on average about $150 million a year in special local bond proceeds over the past decade.

K–12 School Building Needs. Under the SFP, K–12 school districts must demonstrate the need for new or modernized facilities. Through May 2002, the districts have identified a need to construct new schools to house 1.2 million pupils and modernize schools for an additional 1.2 million pupils. We estimate the state cost to address all of these needs to be roughly $20 billion.

Higher Education

California's system of public higher education includes 140 campuses in the three segments listed below, serving about 2.3 million students:

- The California Community Colleges provide instruction to 1.7 million students at 108 campuses operated by 72 locally governed districts throughout the state. The community colleges grant associate degrees and also offer a variety of vocational skill courses.
- The CSU system has 23 campuses, with an enrollment of about 395,000 students. The system grants bachelor and master degrees, and a small number of joint doctoral degrees with UC.
- The UC has eight general campuses and one health sciences campus with a total enrollment of about 184,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for research.

Over the past decade, the voters have approved nearly $4.4 billion in general obligation bonds for capital improvements at public higher education campuses. The state also has provided almost $1.5 billion in lease revenue bonds for this same purpose.

In addition to these state bonds, the higher education segments have other sources of funding for capital projects.

- ***Local General Obligation Bonds.*** Community college districts are authorized to sell

general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last decade, community college districts have received local voter approval to issue about $5 billion of bonds for construction and renovation of facilities.

- ***Gifts and Grants.*** The CSU and UC in recent years together have received on average over $100 million annually in gifts and grants for construction of facilities.
- ***UC Research Revenue.*** The UC finances the construction of new research facilities by selling bonds and pledging future research revenue for their repayment. Currently, UC uses about $125 million a year of research revenue to pay off these bonds.

Higher Education Building Plans. Each year the institutions of higher education prepare capital outlay plans in which they identify project priorities over the next few years. Higher education capital outlay projects in the most recent plans total $4.4 billion for the period 2003–04 through 2006–07.

PROPOSAL

This measure allows the state to issue $13.05 billion of general obligation bonds for construction and renovation of K–12 school facilities ($11.4 billion) and higher education facilities ($1.65 billion). General obligation bonds are backed by the state, meaning that the state is obligated to pay the principal and interest costs on these bonds. General Fund revenues would be used to pay these costs. These revenues come primarily from state income and sales taxes. Figure 1 shows how these bond funds would be allocated to K–12 and higher education.

K–12 School Facilities

Figure 1 describes generally how the $11.4 billion for K–12 school projects would be allocated. However, the measure would permit changes in this allocation with the approval of the Legislature and Governor.

New Construction. A total of $6.35 billion would be available to buy land and construct *new* school buildings. Of this amount, $2.9 billion would be set aside for "backlog" projects—that is, projects for which districts had submitted applications on or before February 1, 2002, but that have not yet been funded. The remaining funds—$3.45 billion—would be available for new construction projects submitted after February 1, 2002. Districts would be required to pay for 50 percent of costs with local resources. The measure also provides that up to $100 million of the $3.45 billion in new construction funds is available for charter school facilities. (Charter schools are public schools that operate independently of many of the requirements of regular public schools.)

Modernization. The proposition makes $3.3 billion available for the reconstruction or modernization of *existing* school facilities. Of this amount, $1.9 billion would be available for backlog projects and $1.4 billion for new proposals. Districts would be required to pay 40 percent of project costs from local resources.

Critically Overcrowded Schools. This proposition directs a total of $1.7 billion to districts with schools which are considered critically overcrowded. These funds would go to schools that have a large number of pupils relative to the size of the school site.

Joint-Use Projects. The measure makes a total of $50 million available to fund joint-use projects. (An example of a joint-use project is a facility constructed for use by both a K–12 school district and a local library district.)

Higher Education Facilities

The measure includes $1.65 billion to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings for California's public higher education systems. The Governor and the Legislature would select the specific projects to be funded by the bond monies.

Related Bond Funding. The legislation which placed this proposition on the ballot provides $651.3 million in lease revenue bonds to fund specific projects. Lease revenue bonds are similar to state general obligation bonds except they do not require voter approval and are not backed by the full faith and credit of the state. This would fund $279 million for UC (7 projects), $191.3 million for CSU (4 projects), $170.5 million for the community colleges (11 projects), and $10.5 million for the California State Library (1 project).

Future Education Bond Act

The legislation which placed this proposition on the ballot authorizes a $12.3 billion bond measure to be placed on the 2004 primary election ballot. (If the voters do not approve this measure, the same bond issue would be placed on the November 2004 ballot.)

The bond measure would provide:

- $10 billion for K–12 school facilities (with roughly half for new construction and a fourth each for modernization and critically overcrowded schools).
- $2.3 billion for higher education (with $920 million for community colleges and $690 million each for UC and CSU).

FISCAL EFFECT

The cost of these bonds would depend on their interest rates and the time period over which they are repaid. If the $13.05 billion in bonds authorized by this proposition are sold at an interest rate of 5.25 percent (the current rate for this type of bond) and repaid over 30 years, the cost over the period would be about $26.2 billion to pay off both the principal ($13.05 billion) and interest ($13.15 billion). The average payment for principal and interest would be about $873 million per year.

Figure 1

Proposition 47
Uses of Bond Funds

(In Millions)	**Amount**
K-12	
New Construction:	
New projects	$3,450[a]
Backlog[b]	2,900
Modernization:	
New projects	1,400
Backlog[b]	1,900
Critically overcrowded schools	1,700
Joint use	50
Subtotal, K-12	($11,400[c])
Higher Education	
Community Colleges	$746
California State University	496
University of California	408
Subtotal, Higher Education	($1,650)
Total	**$13,050**

[a] Up to $100 million available for charter schools. Up to $25 million available for reimbursements to homebuyers for fees paid to school districts to fund new facilities, but only in the event Proposition 46 fails.
[b] Projects for which districts had submitted applications on or before February 1, 2002.
[c] Up to $20 million available for energy conservation projects.

Working together to improve the educational environment for California's children

School Facility Program Handbook

A guide to assist with applying for and obtaining grant funds

July 2007

State of California
Arnold Schwarzenegger, Governor

State and Consumer Services Agency
Rosario Marin, Secretary

Department of General Services
Will Bush, Director
Will Semmes, Chief Deputy Director

State Allocation Board
Office of Public School Construction
Rob Cook, Executive Officer – SAB/OPSC
Lori Morgan, Deputy Executive Officer – SAB/OPSC
Mavonne Garrity, Assistant Executive Officer – SAB

Prepared on behalf of the
State Allocation Board

by the
Office of Public School Construction
1130 K Street, Suite 400
Sacramento, CA 95814

916.445.3160 Tel
916.445.5526 Fax
www.opsc.dgs.ca.gov

Contents

Preface

Introduction

This handbook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining "grant" funds for the new construction and modernization of schools under the provisions of the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). It is intended to be an overview of the program for use by school districts, parents, architects, the Legislature, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for State funding. This handbook provides direction on accessing the processes leading to project approvals, insight to the various features of the School Facility Program (SFP), and includes suggestions on how to make the funding system as efficient as possible. For information not contained in this handbook, districts should consult with their respective project managers for assistance; or refer to additional project specific information contained in the SFP Regulations. The SFP Regulations are located on the OPSC Web site at www.opsc.dgs.ca.gov. The OPSC project managers are assigned by county, and a complete listing of project manager assignments, including telephone numbers and e-mail addresses, are also included on our Web site.

Things to Know

This updated version of the handbook includes various regulation changes that occurred between 2005 and 2007 and include:

- Critically Overcrowded School Facilities Program Amendments (effective 10/27/2005)
- Small High School Program (effective 03/14/2006)
- Alternative Enrollment Projection Methods (effective 05/15/2006)
- Re-Designation of Energy Funds (effective 08/21/2006)
- General Site Development Additional Grant (effective 09/05/2006)
- Multi-Story Replacement of Single-Story Facilities Amendments (effective 11/03/2006)
- Modernization Handicapped Access/Fire Code Excessive Cost Hardship Grant Amendments (effective 04/25/2007)
- Charter School Facility Program Amendments (effective 05/17/2007)

Where to Begin

Section 1, "School Facility Program Overview" and Section 2, "The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies" will provide general information. After reviewing these sections, the reader may want to review Section 4, "Application for Eligibility," because establishing eligibility is the first step in filing an application for either new construction or modernization funding. The remaining sections can be reviewed as the topics arise.

This page is intentionally blank.

Section 1
School Facility Program Overview

Introduction

The School Facility Program (SFP) was implemented in late 1998 and is a significant change from previous State facilities programs. The State funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and other project specific costs when warranted. This process makes the calculation of the State participation quicker and less complicated. In most cases, the application can be reviewed, the appropriate grants calculated, and State Allocation Board (SAB) approval received in 60–90 days regardless of project size.

In addition to a less complicated application process, the SFP provides greater independence and flexibility to school districts to determine the scope of new construction or modernization projects. There is considerably less project oversight by State agencies than in previous State programs. In return, the program requires the school district to accept more responsibility for the outcome of the project, while allowing the district to receive the rewards of a well managed project. All State grants are considered to be the full and final apportionment by the SAB. Cost overruns, legal disputes, and other unanticipated costs are the responsibility of the district. On the other hand, all savings resulting from the district's efficient management of the project accrue to the district alone. Interest earned on the funds, both State and local, also belongs to the district. Savings and interest may be used by the district for any other capital outlay project in the district. See Section 13, "Additional SFP Requirements and Features" for more information on project savings.

The SFP provides funding grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The two major funding types available are "new construction" and "modernization".[1] The new construction grant provides funding on a 50/50 State and local match basis. The modernization grant provides funding on a 60/40 basis. Districts that are unable to provide some or all of the local match requirement and are able to meet the financial hardship provisions may be eligible for additional State funding (see Section 10, "Financial Hardship").

To ensure that districts are providing adequate safe facilities to students, approval by both the Division of the State Architect (DSA) is required prior to signing a contract for any new construction, modernization and alteration projects for which State funding is requested. Education Code, Section 17072.30, requires that school districts obtain DSA approval of their project's plans and specifications prior to submitting a funding application to the OPSC. The DSA approval ensures that the plans and specifications are in compliance with California's requirements for structural safety, fire and life safety, and accessibility. Districts that sign construction contracts prior to obtaining DSA approval risk their project's eligibility for State funding. The only exception to this requirement is for relocatable buildings, for which districts may enter into a contract to acquire the plans and specifications; however construction cannot commence until DSA approval of the final plans and specifications has been obtained. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval.

---

[1] Education Code, Sections 17072.10 and 17074.10, establish the new construction grant and modernization grant, respectively.

Implementation and Evolution of the School Facility Program

Senate Bill 50 (Greene) was chaptered into law on August 27, 1998, establishing the SFP. The legislation required that regulations be approved and in place for accepting and processing applications as soon as Proposition 1A was approved by the voters the following November. The SFP continues to evolve through legislative changes. Assembly Bill (AB) 16 and AB 14 provided for significant changes by requiring that regulations be approved and in place for accepting and processing applications as soon as Proposition 47 was approved by the voters in November 2002. These changes included funding for charter school facilities, critically overcrowded schools and joint-use projects. Some of the changes that impacted new construction funding include the suspension of Priority Points, an additional grant for energy efficiency, and several changes that impact the determination of eligibility. Some of the changes that impacted modernization funding include the change of the funding ratio between the State and the school district from 80 percent State and 20 percent district to 60 percent State and 40 percent school district, and additional grants for energy efficiency and the modernization of buildings 50 years old or older.

The passage of Proposition 55 in March 2004 provided an additional $12.3 billion for the construction and renovation of K–12 school facilities and higher education facilities. These funds made available through the School Facility Program, continue to make a difference in assisting school districts with overcrowding and accommodating future enrollment growth.

Proposition 1D provided an additional $7.3 billion in November 2006 which has already begun to assist school districts to repair and modernize older facilities. These funds will additionally assist with overcrowding and accommodate future enrollment growth.

Information on each category of funding can be found in the following sections:

SFP FUNDING CATEGORY	SECTION	PAGE
New Construction	5	23
Modernization	9	29
Financial Hardship	10	71

Funding for the School Facility Program

Helpful Hint:
A listing of school districts that have received SFP funding is available on the OPSC Web site at www.opsc.dgs.ca.gov.

Funding for projects approved in the SFP comes exclusively from statewide general obligation bonds approved by the voters of California. The first funding for the program was from Proposition 1A, approved in November 1998. That bond for $9.2 billion contained $6.7 billion for K–12 public school facilities. The second funding for the program was from Proposition 47, approved in November 2002. It was a $13.2 billion bond, the largest school bond in the history of the State. It contained $11.4 billion for K–12 public school facilities. In March 2004 a third bond was passed by California voters for another $12.3 billion. Of the $12.3 billion provided by Proposition 55, it contained $10 billion for K–12 public school facilities. At this time funds remain for new construction projects.

In November 2006 an additional $10.416 billion was passed by the voters. Of the $10.416 billion provided by Proposition 1D, $7.3 billion will be utilized by school districts to address overcrowding, provide career technical education facilities, accommodate future enrollment growth, renovate and modernize older school buildings and allow participation in community related joint-use projects. The 2006 bond measure is summarized as follows:

PROGRAM	BOND 2006
New Construction *	$ 1,900,000,000 †
Modernization *	3,300,000,000
Overcrowding Relief Grant	1,000,000,000
Joint Use	29,000,000
Career Technical Education Facilities Program	500,000,000
Charter Schools	500,000,000
High Performance Schools	100,000,000
Total K–12	$ 7,329,000,000

* Up to $200 million of the new construction and modernization funds specified for small high schools.

† Up to 10½ percent is available for seismic repairs, reconstruction, or replacement.

This page is intentionally blank.

Section 2

The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies

State Allocation Board

Created in 1947 by the State Legislature, the State Allocation Board (SAB) is responsible for determining the allocation of State resources including proceeds from General Obligation Bond Issues and other designated State funds used for the new construction and modernization of public school facilities. The SAB is also charged with the responsibility for the administration of the State Relocatable Classroom Program, the Deferred Maintenance Program, and many other facilities related programs. Handbooks on these programs may be found on the Office of Public School Construction (OPSC) Web site at www.opsc.dgs.ca.gov. Printed copies may be obtained by contacting the OPSC directly.

The SAB meets monthly, typically at the State Capitol. At each meeting the SAB reviews and approves applications for eligibility and funding, acts on appeals, and adopts policies and regulations as they pertain to the programs that the SAB administers.

The SAB is comprised of ten members:

- The Director of the Department of Finance or designee (Traditional SAB Chair)
- The Director of the Department of General Services or designee
- The Superintendent of Public Instruction or designee
- One person appointed by the Governor
- Three State Senators; appointed by the Senate Rules Committee (two from the majority party and one from the minority party)
- Three State Assembly Members; appointed by the Speaker of the Assembly (two from the majority party and one from the minority party)

The current SAB members are:

- Mr. Michael Genest, Director, Department of Finance
- Mr. Will Bush, Director, Department of General Services
- Mr. Jack O'Connell, Superintendent of Public Instruction
- Ms. Rosario Girard, Governor's Appointee
- Senator Bob Margett
- Senator Jack Scott
- Senator Joe Simitian
- Assembly Member Gene Mullin
- Assembly Member Jean Fuller
- Assembly Member Kevin de León

The current SAB officers are:

- Rob Cook, Executive Officer
- Lori Morgan, Deputy Executive Officer
- Mavonne Garrity, Assistant Executive Officer

SAB Implementation Committee

The SAB Implementation Committee is an informal advisory body established by the SAB to assist the SAB and the OPSC with policy and legislation implementation. The committee membership is comprised of organizations representing the school facilities community which meets approximately once a month depending upon the workload. The SAB Assistant Executive Officer is the chair of the committee. Committee membership, as well as the time and location of future meetings, can be found on the OPSC Web site at www.opsc.dgs.ca.gov.

Office of Public School Construction

OPSC Mission:
"As staff to the State Allocation Board, the Office of Public School Construction facilitates the processing of school applications and makes funding available to qualifying school districts. These actions enable school districts to build safe and adequate school facilities for their children in an expeditious and cost-effective manner."

The OPSC serves the 1,000 plus K–12 public school districts in California. As staff to the SAB, the OPSC is responsible for allocating State funding for eligible new construction and modernization projects to provide safe and adequate facilities for California public school children. The OPSC is also responsible for the management of these funds and the expenditures made with them. It is also incumbent on the OPSC to prepare regulations, policies, and procedures for approval by the SAB that carry out the mandates of the law.

OPSC Responsibilities

The OPSC is charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of eligibility or funding which is being requested and to work with school districts to assist them throughout the application process. The OPSC ensures that funds are allocated properly and in accordance with the law and decisions made by the SAB. Since November of 1998, the OPSC has processed over $28.8 billion in State apportionments to the SAB. The programs, funding, and approvals over that period are shown in Appendix 5, "Summary of Bond and Deferred Maintenance Allocations."

The OPSC prepares agendas for the SAB meetings. These agendas keep the SAB members, districts, staff, and other interested parties apprised of all actions taken by the SAB. The agenda serves as the underlying source document used by the State Controller's Office for the appropriate release of funds. The agenda further provides a historical record of all SAB decisions, and is used by school districts, facilities planners, architects, consultants, and others wishing to track the progress of specific projects, the availability of funds, and SAB regulations.

Helpful Hint:
The Directory of Services provides information regarding project manager county assignments, including telephone numbers and other contact information.

Management of the Office of Public School Construction

The OPSC is directed by an Executive Officer who is appointed by the Governor. The appointee also serves as the Executive Officer to the SAB. A Deputy Executive Officer is selected by the Executive Officer subject to the approval of the Director of General Services. The Deputy oversees the daily operation of the office. An Assistant Executive Officer is appointed by the SAB. Although not technically a member of the OPSC management, the Assistant Executive Officer works directly with the OPSC management team and acts as liaison between the SAB and the OPSC.

Other Agencies Involved

School districts planning to construct or modernize existing schools require the assistance of several local, State, and federal agencies. It is essential that those dealing with the school construction process have an understanding of the role each agency plays. The three primary State agencies that will be referred to in this guidebook, in addition to the SAB and the OPSC, are the Division of the State Architect (DSA), the California Department of Education (CDE) School Facilities Planning Division (SFPD), and the Department of Toxic Substances Control (DTSC). District representatives may also come into contact with many other agencies. A listing of some of the agencies that might be involved in a school project and their role is provided in Appendix 2, "Potential State Agency Involvement".

The agency information provided in this section is meant as a tool for school district representatives to become familiar with the primary State agencies involved in the school construction process. The OPSC encourages district representatives to contact each agency to obtain more information about their procedures and processes. To contact the agencies listed below, please see Appendix 1, "State Agency Contact Information."

Department of General Services, Division of the State Architect

The primary role of the DSA in the school construction process is to review plans and specifications to ensure that they comply with California's building codes, with an emphasis on structural and seismic safety. The review commences when the school district's architect submits working drawings to the DSA. The DSA reviews the working drawings to assure that the proposed structures meet codes and requirements for structure (seismic), fire and life safety, and universal design compliance.

DSA approval of all plans and specifications is required prior to a construction contract being signed for new construction, modernization or alteration of any school building for which a district is seeking State funding. The only exception to this requirement is for relocatable buildings, for which districts may enter into a contract to acquire the plans and specifications; however construction cannot commence until DSA approval has been obtained. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval. Please refer to the Education Code, Section 17072.30, for further information.

California Department of Education, School Facilities Planning Division

The role of the SFPD is to review and approve school district sites and construction plans. The SFPD review begins when a school district plans to acquire a new school construction site. Prior to approving a site for school purposes, the SFPD reviews many factors, including, but not limited to, environmental hazards, proximity to airports, freeways, and power transmission lines. The review of construction plans by the SFPD focuses mainly on the educational adequacy of the proposed facility and whether the needs of students and faculty will be met. See Section 3, "Project Development Activities."

Department of Toxic Substances Control

The role of the DTSC in the school construction process begins with the SFPD's site approval process. The DTSC will assist the district with an assessment of any possible contamination, and, if necessary, with the development and implementation of a mitigation plan.

Department of Industrial Relations

The role of DIR in the school construction process is to enforce labor laws relating to contractors and employers.

The Labor Code[1] requires, prior to receiving a SFP fund release, a district to make a certification that a labor compliance program (LCP), that has been approved by the DIR, for the project apportioned under the SFP has been initiated and enforced if both of the following conditions exist:

- The district has a project which received an apportionment from the funding provided in Proposition 47[2] or Proposition 55; and,
- The construction phase of the project commences on or after April 1, 2003, as signified by the date of the Notice to Proceed.

The DIR provides a guidebook to assist districts in developing a LCP and has model LCPs available for view on its Web site at www.dir.ca.gov. The DIR also provides public works contract information regarding:

- LCP and the Labor Code
- Classification and Scope of Work
- Prevailing Wage Determination and Special Determination for a Specific Project
- Verification of the Status of an Individual Apprentice or an Apprenticeship Program

Questions regarding these matters and LCP approval may be directed to DIR at 415.703.4810.

[1] Refer to Labor Code, Section 1771.7

[2] Kindergarten-University Public Education Facilities Bond Act of 2002

Section 3
Project Development Activities

Introduction

The School Facility Program (SFP) provides funding to projects that are essentially through the design phase and are ready to begin construction. With the exception of certain advanced planning and site applications for financial or environmental hardship situations, applications for funding require plans approved by the Division of the State Architect (DSA) and by the California Department of Education (CDE). Applications for new construction funding may also require CDE approval of the project site. In most cases, a great deal of time, money, and effort has already been expended before the project ever reaches the Office of Public School Construction (OPSC). Most of the tasks involved in this section are not a part of the SFP and are not under the jurisdiction of the State Allocation Board (SAB). However, it is important that the district representative is aware of the options and requirements that may affect the district's project.

Establishing Eligibility

One of the first steps a district should consider in the school construction process is establishing eligibility for SFP funding on either a district-wide or high school attendance area basis. This will provide the district with the information needed to determine the possibility and scope of State funding assistance, the types of facilities needed, and the appropriate project site size. See Section 4, "Application for Eligibility" for more information about establishing eligibility.

Selecting Professional Services

The SFP grants include funding for many professional services related to the development of the school project. Some of the most obvious and commonly used services are provided by architects, civil and structural engineers, and construction managers. Under law, these professional services are different than the services provided by general contractors, painters, site grading subcontractors, and similar construction related work. Unlike construction contracts, professional service contracts are obtained through a qualifications-based selection process rather than a competitive bid process.

Because the design professional or other service provider will be engaged long before the application for project funding is submitted to the OPSC, it is critical district representatives are aware that professional services used on projects funded through the SFP must be obtained by a competitive selection process. Failure to do so can jeopardize the project funding.

The Competitive Selection Process

The SFP requires that applicant districts certify that contracts for the services of any architect, structural engineer, or other design professional that were entered into on or after November 4, 1998 for work on the

project were obtained through a competitive process. The term competitive does not mean that the selection has been bid, but rather that a formal qualifications-based selection process has occurred that resulted in the professional services contract.[1]

Neither the SAB nor the OPSC is qualified to interpret the Government Code requirements pertaining to the selection of professional services. The district is advised to seek legal counsel assistance to ensure that the process used fully complies with this requirement as well as other legal requirements[2] such as Disabled Veterans Business Enterprise requirements, and the Public Contract Code.

Eventually, the district will be required to certify that professional design services on the project were selected using a competitive process. This certification is made on the *Application for Funding* (Form SAB 50-04).

Compliance

The competitive selection requirement applies to a new construction or modernization project if:

- it is funded under the SFP, and
- professional services of an architect, structural engineer, or other design professional were used to complete the work in the project, and
- contracts for those services were signed on or after November 4, 1998.

Compliance with this requirement is very important. The law specifically mandates that the SAB shall not apportion funds to a district unless the competitive process for professional services has been used. If, during an audit at the project completion, it is determined that the competitive process was not used, the entire project grant could be found to have been attained illegally.

Districts that are unfamiliar with the process of hiring an architect should be aware that the American Institute of Architects (AIA) California Council has sample contracts available to assist districts. For more information, please contact the AIA at 916.448.9082.

Project Responsibilities

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the district as owner. Frequently, however, the district may not be aware of the difference between the types of responsibilities, or even of the need to assign responsibilities and tasks related to the project. This lack of clarity may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

As a result of this situation, a small working group was formed by the Joint Committee on School Facilities to address the issue. The Services Matrix is the result of the group's discussions (see Appendix 4, "Services Matrix"). District representatives may wish to consult the matrix to determine the responsibilities assigned to a project and to avoid duplication of effort.

---

[1] Section 11, commencing with Section 4525 of Division 5 of Title 1 of the Goverment Code.

[2] CEQA and Planning per Public Resources Code, Section 21151.2.

Cost Reduction

Helpful Hint:
The SAB publication on cost reduction is available on the OPSC Web site.

The SAB has developed cost reduction guidelines to assist school districts in reducing project construction costs. In April 2000, the SAB made available the *Public School Construction Cost Reduction Guidelines*. The guidelines are a compilation of hundreds of ideas introduced and discussed at a series of statewide meetings. The input into these guidelines comes from various sources, such as school district representatives, State agencies, architects, building industry representatives, construction managers, and consultants. The guidelines provide districts with ideas and new methods to contain and reduce costs and to maximize the return on expenditures. Along with cost reduction guidelines, other incentives within the program, such as the retention of savings, exist to promote efficiency in design and construction of school facility projects. (See Section 13, "Additional SFP Requirements and Features" for more information on project savings.) The *Public School Construction Cost Reduction Guidelines* are accessible on the OPSC Web site at www.opsc.dgs.ca.gov.

Design with Flexibility in Mind

The SAB approval is based on the plans and specifications that accompany the *Application for Funding* (Form SAB 50-04) and is full and final. Therefore, it is imperative that the apportionment is used for the scope of work contained in that specific set of plans.

When it comes to classrooms and minimum essential facilities (MEF), meaning libraries, gymnasiums, multi-purpose rooms, and toilets which are necessary and support the traditional classroom environment, there are limited circumstances where a project may deviate from the scope of work outlined in the plans that were included with the application and approved by the SAB (see "Change of Scope," in Section 13, "Additional SFP Requirements and Features," for more information on this topic). Because of this, it is extremely important to structure bids with flexibility so that projects can be modified in the face of positive or negative fluctuations in the bid climate or costs of materials. By including additive and deductive alternates in your plans and specifications, you will be able to handle both situations within the budget provided for your SFP project in a way that is consistent with SAB law and regulation.

Joint-Use Projects

The language in the law which creates the SFP requires that the applicant school district consider the joint use of core facilities. The SAB's *Public School Construction Cost Reduction Guidelines* contains a number of suggestions as to how a district might investigate such joint use possibilities. Grants received under the new construction program may be used to fund school facilities related joint-use projects. Typical joint-use projects include multi-purpose rooms, libraries, gymnasiums, or any other type of facilities that can be used by both the district and the community.

Propositions 55 and 1D provide funding for joint-use projects, specific criteria to access this funding was included in AB16 (Hertzberg) (see Section 8, "Joint-Use Projects" for more information).

Reusable Plans

The SFP requires the SAB to develop recommendations regarding the use of cost-effective, efficient, and reusable facility plans. Many districts have found that reusing some part or all of a school plan previously constructed in the district or in another district can lead to efficiencies in both the time required to prepare construction plans and the cost of constructing the facility. Such plan reuse is not always feasible, and, even when possible, may require considerable redesign work for the new site; however, in many circumstances the advantages can be significant.

To assist districts with exploring the feasibility of plan reuse for their new construction project, the SAB and the OPSC have developed an Internet-based "catalog" of plans that can be searched and browsed by anyone. The link on the OPSC Web site "Prototype School Designs," contains floor plans, renderings, and vital statistics for a number of projects ranging from complete schools to single classrooms and support buildings. Districts are encouraged to download information on any of the projects on the OPSC Web site without charge. Districts may then contact the architects responsible for the original projects to pursue adaptation of the facilities to their individual needs. Arrangements for use of the plans are made by the district with the design professional. Of course, all plans on the OPSC Web site are copyrighted by the designers or firms that submitted them. The SAB and OPSC do not participate in any way, except as a clearinghouse for plans of school facilities.

Project Financing

A district has several different options available to meet its 50 percent funding requirement for new construction and 40 percent funding requirement for modernization projects. Some financing mechanisms the district may consider are:

- General obligation bond funds
- Mello-Roos
- Developer fees
- Proceeds from the sale of surplus property
- Federal grants

Once a district has received a SFP apportionment and is ready for funds to be released on a project, they will need to certify on the *Fund Release Authorization* (Form SAB 50-05) that their contribution to the project has already been expended, is on deposit, or will be expended prior to the notice of completion for the project. (See Section 13, "Additional SFP Requirements and Features" for more information on the fund release process.)

Site Selection

The SFP provides that in addition to the basic grant for a new construction project, the district may also receive up to 50 percent of the cost of site acquisition (see Section 5, "New Construction Funding" or Section 10, "Financial Hardship"). In most cases, the district must have completed the process of identifying the site and must have approval of the site by the CDE prior to applying for site acquisition funding. Some separate site applications for financial or environmental hardships do not need this approval at the time of application. See further discussion under those topics in Section 5, "New Construction Funding". The identification and approval process falls under the jurisdiction and responsibility of agencies other than the SAB and the OPSC, and is therefore outside the scope of this guidebook. However, because the processes required can be a major factor in a timely application submittal for project funding, district representatives should be aware of some of the basic requirements for site selection as follows:

Identifying a Site

Selecting a site for a new construction project to be funded under the SFP is primarily a local process. The SAB has guidelines and regulations relating only to the funding limits related to site acquisition[3]. The CDE is given the authority in law to develop standards for school site acquisition related to the educational merit and the health and safety issues of the site. The CDE uses these standards to review a site and to determine if the site is an appropriate location for a school facility. The CDE approval is a requirement before the application for funding can be submitted to the OPSC and subsequently to the SAB for funding.

Site Approval

There are many components that make up the review and approval of a proposed school site. The CDE publication, *School Site Selection and Approval Guide*, addresses these components more completely than this guidebook can. Therefore, the district representative considering an application for a site under the SFP should consult the CDE or their publications. Contact information can be found in Appendix 1, "State Agency Contact Information."

[3] SFP Regulations, Sections 1859.74 through 1859.76.

This page is intentionally blank.

Section 4
Application for Eligibility

Introduction

The School Facility Program (SFP) provides State funding assistance for two major types of facilities construction projects: new construction and modernization. The process for accessing the State assistance for this funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are approved by the State Allocation Board (SAB) and this approval establishes that a school district or county office of education meets the criteria under law to receive assistance for new construction or modernization. Eligibility applications do not result in State funding. In order to receive the funding for an eligible project, the district representative must file a funding application with the Office of Public School Construction (OPSC) for approval by the SAB. See Section 5, "New Construction Funding" and Section 9, "Modernization Funding" for information on submitting applications for funding.

Helpful Hint:
Applications for eligibility may be filed in advance of applications for funding.

Applications for eligibility may be filed in advance of an application for funding, or the eligibility and funding requests may be filed concurrently at the preference of the district. In either case, an application for eligibility is the first step toward funding assistance through the SFP. The process must be done only once. Thereafter, the district need only update the eligibility information if additional new construction and modernization funding applications are submitted.

After the application for eligibility is reviewed by the OPSC, it is presented to the SAB for approval. The SAB's action establishes that the district has met the criteria set forth in law and regulation to receive State funding assistance for the construction of new facilities or the modernization of existing facilities. Throughout this section, references to the district also include a county office of education unless otherwise noted.

The discussions in this section are intended to describe the basic processes a district will encounter and use for establishing eligibility. Every possible situation cannot be dealt with in this overview. When preparing an application, the district representative should always contact the OPSC project manager to be sure that the district's approach is correct and will result in the most eligibility possible for State assistance. To learn more about the SFP, visit the OPSC Web site at www.opsc.dgs.ca.gov.

New Construction Eligibility

The underlying concept behind eligibility for new construction is straightforward. A district must demonstrate that existing seating capacity is insufficient to house the pupils existing and anticipated in the district using a five-year projection of enrollment. Once the new construction eligibility is determined, a "baseline" is created that remains in place as the basis of all future applications. The baseline is adjusted for changes in enrollment and for facilities added, and may be adjusted for other factors such as errors and omissions or amendments to the SFP Regulations. For a complete list of adjustments, refer to SFP Regulations, Section 1859.51. Except for these updates, the establishment of the eligibility baseline is a one-time process.

Establishing Eligibility on a District-Wide or High School Attendance Area Basis

Districts generally establish eligibility for new construction funding on a district-wide basis. For most districts this is the most beneficial method, and the vast majority of applications are filed in this manner. However, under certain circumstances, the district may have more eligibility if the applications are made on a High School Attendance Area (HSAA) basis using one or several attendance areas. This circumstance occurs when the building capacity in one HSAA prevents another from receiving maximum eligibility. For example, one attendance area may have surplus classroom capacity while another does not have the needed seats to meet the current and projected student enrollment. If the district were to file on a district-wide basis, there might be little or no overall eligibility, even though the students in one attendance are "unhoused" by the definitions established in the SFP. In this case, by filing on a HSAA, the eligibility would increase to allow construction of adequate facilities for the unhoused students.

The district may file using one high school attendance area, or at the district's option, it may combine two or more adjacent HSAAs, commonly called a "Super Attendance Area." In either case, the attendance areas must serve an existing, operating high school, and the district must demonstrate that at least one HSAA has negative eligibility at any grade level. Continuation or proposed high schools may not be used for this purpose. Once a district receives funding using a high school attendance area as the basis of its eligibility, it must continue to file future new construction applications on that basis for five years.

Eligibility Process

The SAB has adopted three forms to assist districts in collecting the information needed to establish eligibility. The following table outlines the three-step process a district uses to establish new construction eligibility:

Process for Establishing New Construction Eligibility

STEP	DOCUMENTATION	PURPOSE
1	Enrollment Certification/Projection Form SAB 50-01	Used to collect information about the district's current and historical enrollment and to project that data five years into the future.
2	Existing School Building Capacity Form SAB 50-02	Used to record all the teaching stations in the district that are adequate to house students.
3	Eligibility Determination Form SAB 50-03	Used to compare the information from the first two forms and to determine if the district is eligible for new construction or modernization grants.

The forms referred to in the table can be downloaded from the OPSC Web site at www.opsc.dgs.ca.gov in a format that allows them to be printed as blank forms or completed on the computer and printed for submission to the OPSC. An Excel spreadsheet titled *SAB 50-01, 02, 03 Combined Excel Worksheets* is also available on the OPSC Web site that will perform all the required calculations.

Step One—Enrollment Projections

It may take several years to take a new construction project from the initial determination of need to final completion of construction and occupancy. Because of this, the SFP provides a *projection* of enrollment five years into the future to determine eligibility for funding. The *Enrollment Certification/Projection* (Form SAB 50-01) is used to make this projection. This form assists the district with determining future needs, planning, arranging State and local funding, and constructing the project before the children to be served arrive. The method of projecting enrollment into the future involves using current and historical California Basic Educational Data System (CBEDS) enrollment data for the district. The data collected is then projected into the future for five years using a method known as a Cohort Survival Projection. A district can obtain CBEDS data from the California Department of Education (CDE).

A district may file on a HSAA basis utilizing one or more HSAA. If the district chooses to file an application on this basis the current and three previous years enrollment data in the HSAA or HSAAs (see section on High School Attendance Areas in this section) will need to be included on the Form SAB 50-01.

Once the district enters the required current and historical enrollment figures, the projection is done automatically on the Excel version of this form.

Supplemental Enrollment Figures. A district may supplement the cohort survival enrollment projection by the number of un-housed pupils that are anticipated as a result of dwelling units proposed to be built in the district or HSAA pursuant to approved and valid tentative subdivision maps. Essentially, districts that are experiencing unusual residential growth can factor in these additional students into the enrollment projection.

What is an Approved and Valid Tentative Subdivision Map? California State law provides a framework by which city or county planning authorities process residential development projects. Typically, this process begins at the Specific Map stage, then proceeds to the Tentative Tract Map stage and concludes at the Final Map stage. The OPSC recognizes that each city or county planning authority process may not entirely follow this process. However, State law requires a tentative subdivision map be approved and valid at the time of submittal for the purposes of augmenting the enrollment projection. The SAB and the OPSC will permit the use of the following maps to augment enrollment projections:

- » Tentative Tract Map
- » Final Map
- » Parcel Map—only when the construction involves an apartment complex or condominium building.
- » Other tract maps will be reviewed on a case-by-case basis.

Submittal Requirements. In order for districts to account for the additional students that will reside in new subdivisions represented by the maps listed above, a district will need to submit a Form SAB 50-01 and report the number of dwelling units to be constructed in the approved proposed subdivision. Additionally, the district must provide the approval dates of the maps by the local planning commission or approval authority; the number of dwelling units to be built in the subdivision; and one of the following:

- » an acceptable map with the local planning commission or approval authority stamp approving the map; or,
- » an acceptable map with the appropriate supporting documentation; or,
- » a spreadsheet listing all of the subdivisions reported on the Form SAB 50-01 with the appropriate supporting documentation.

When submitting supporting documentation it must include one of the following:

- » local planning commission or approval authority meeting minutes detailing the approval of the map; or,
- » a letter from the local planning commission or approval authority indicating that the tract map is approved and valid at the time of the submittal; or,
- » any other reasonable documentation from the local planning commission or approval authority that indicates the tract map is approved and valid.

The OPSC recognizes that local processes vary from county to county, thus the information provided from each planning authority varies. Districts still need to be aware that by signing the Form SAB 50-01, the district representative is certifying that the information provided meets the criteria set forth by law and regulation. If there is any confusion about the information provided by the planning authority, districts are encouraged to work with their project manager.

A yield factor from the various types of housing in the subdivision may be used to supplement the enrollment projection. As an alternative, the district may accept a state-wide average yield factor for calculation purposes. This factor is specified in the instructions on the Form SAB 50-01. Should the district wish to

Helpful Hints:

- Make sure the maps being used are tentative tract maps, final maps or parcel maps (parcel maps can be used only for either apartment or condominium projects).
- Work closely with your local planning commission to ensure the maps are approved and valid.
- When reporting dwelling units on the Form SAB 50-01, be sure to reduce the number of proposed dwelling units by the number of homes that have been occupied or have had construction permits pulled that are twelve months or older from the date the permit was pulled.
- Use the dwelling unit spreadsheet provided on the OPSC Web site to ensure timely processing of the district's application.
- If you are unsure if you can include a tract map, or you have other evidence of approval not previously mentioned, please contact your Project Manager.

use its own student yield factors, a copy of the district's study that justifies the student yield factors must be submitted with the Form SAB 50-01. The district's study should determine the elementary, middle and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This study should be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed in which the school district is located.

A supplement to the enrollment projection for proposed housing units is not available for county superintendent applications.

Small districts with current enrollment of less than 300 should be aware that they have an option for reporting their enrollment differently if it has decreased by more than 50 percent from the previous year enrollment. (For more information on using this option please refer to the Form SAB 50-01, Part A.)

Step Two—Existing School Building Capacity

The second part in determining the district's eligibility for new construction assistance is to document the capacity of the school district at the time the first application for eligibility is filed under the SFP. This capacity calculation is done only once. Districts may file capacity information on a district-wide basis or using a HSAA.

The Calculation of Capacity. The *Existing School Building Capacity* (Form SAB 50-02) is used to capture the information needed for the calculations, and the accompanying instructions give a detailed guide of how to complete the form. The Form SAB 50-02 is essentially a record of all the district's facilities. The SFP Regulations provide instructions on what spaces are to be included or excluded in the calculation of the district capacity.[1] It is important to understand that any project funded with local sources must be counted as existing capacity if the contract for construction of the project is signed before the original application for eligibility determination is made. There is an exception provided for projects if the contracts were signed between August 27, 1998 and November 18, 1998, and if the project did not have eligibility under the Lease-Purchase Program (LPP).

The process of calculating the districts' existing school building capacity is as follows:

1. The district completes a gross inventory of all spaces constructed or reconstructed to serve as an area to provide pupil instruction. The grade level of each classroom is also identified.
2. The gross inventory is adjusted by excluding certain spaces that are not considered available teaching stations under law or regulation. The classrooms remaining in the inventory are multiplied by a loading factor of 25 for elementary, 27 for middle and high school, 13 for non-severe, and 9 for severe classrooms to determine the pupil capacity.
3. A final calculation is done to increase the capacity by a specified amount if the district does not have a substantial number of students enrolled in multi-track year-round education. High school districts are not subject to this adjustment. The district may request a waiver from this adjustment from the CDE, School Facilities Planning Division.
4. A last adjustment occurs for those districts that receive Multi-Track Year-Round Education Operational Grants from the CDE. This increases the district capacity and reduces the final eligibility for the district in a number equivalent to the operational grants the district has most recently received from the CDE.

On-Site Reviews. The district must submit records of the teaching stations existing in the district or HSAA as part of the inventory process. These records generally consist of the following:

[1] SFP Regulations, Section 1859.30, "Gross Classroom Inventory."

- » Diagrams of the facilities at each site in the district. These diagrams need not be highly detailed, but must include all permanent and relocatable classrooms at the site. Many districts use simple "fire-drill" maps for this purpose. The diagrams must be submitted with the application.
- » Documentation supporting any exclusion claimed from the gross inventory. For instance, if the district claims that a portable is excluded because it has been leased for less than five years, a copy of the lease must be in the district's possession as supporting documentation.

Helpful Hints:
All of the OPSC worksheets are available on the OPSC Web site.

The district may wish to use an OPSC Site Analysis Worksheet to assist with recording all the classrooms in the gross inventory as well as recording the reasons for exclusions, if any. This document is not mandatory but may make the inventory process easier. It also streamlines the OPSC review of the eligibility application.

Step Three—Determining Eligibility

The last part in the new construction eligibility determination process is done on the *Eligibility Determination* (Form SAB 50-03). The existing school building capacity calculated in step two is subtracted from the enrollment projection determined in step one. The number of pupils left, if any, are considered "unhoused" for the purposes of the SFP. They represent the district's eligibility for new construction grant entitlement.

Eligibility Application Approval. Once the district has completed steps one through three, they are ready to submit the eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete prior to adding the application to the workload list. A more detailed review will be completed prior to presentation to the SAB that may include an on-site visit to review the information included in the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

Alternative Enrollment Projection—AB 491, Chapter 710, Statutes of 2005 (Goldberg)

The most recent amendment to the SFP Regulations includes a provision for Alternative Enrollment Projections that can be used to supplement regular new construction eligibility determined by the Cohort Survival Projection. At the January 2006 meeting, the SAB approved the regulatory amendments and directed the OPSC to request approval of regulations from the Office of Administrative Law on an emergency basis.

This additional provision is available for school districts with two or more school sites each with a pupil population density greater than 115 pupils per acre for K–6 pupils and 90 pupils per acre for 7–12 grade pupils based on the 2004–05 school year enrollment. In addition, an applicant school district must demonstrate that it cannot meet its housing needs at the impacted school sites, after considering all existing eligibility mechanisms available from the Cohort Survival Projection.

School districts that meet the above criteria may submit a request for review of the Alternative Enrollment Projection method to the OPSC. Districts should conduct the projection in a way that best represents growth patterns of each district, and can use various data including, but not limited to, birth rates and census data. The request must include the minimum components described in SFP Regulations, Section 1859.40(b). Due to the complexity of the data that may be submitted, the law requires the Demographic Research Unit (DRU) of the Department of Finance to jointly review the Alternative Enrollment Projection methodologies with the OPSC.

Once the OPSC and the DRU approve the Alternative Enrollment Projection method, the OPSC will calculate the additional eligibility available to the district. Additional eligibility will be the difference between the Alternative Enrollment Projection and the cohort eligibility for the same enrollment reporting period, adjusted by the existing pupil capacity in excess of the projected enrollment according to the Cohort Survival Projection. In other words, alternative enrollment projection must offset any negative new construction eligibility determined under the "regular" method.

Once additional eligibility is determined, the district can utilize this eligibility on new construction projects that will relieve overcrowding, including but not limited to, the elimination of use of Concept 6 calendars, four track year-round calendars, or bussing in excess of 40 minutes. School districts may file new construction funding applications that utilize "regular" new construction eligibility as well as eligibility gained from the Alternative Enrollment Projection. The law provides up to $500 million from the remaining Proposition 55 new construction bond funds for projects that utilize Alternative Enrollment Projection eligibility.

Modernization Eligibility

Establishing eligibility for modernization in the SFP is more simplified than new construction. Applications are submitted on a site by site basis, rather than district-wide or HSAA, as is the case for new construction. To be eligible, a permanent building must be at least 25 years old and a relocatable building must be at least 20 years old. For purposes of determining the age of the building, the 20 year and the 25 year period shall begin 12 months after the plans for the building were approved by the Division of State Architect. In either case, the facility must not have been previously modernized with State funding. The district must also show that there are pupils assigned to the site who will use the facilities to be modernized. If the facility is currently unused, such as a closed school, it may also be eligible for modernization funding if the district intends to reopen it and assign students immediately.

Application Process

The SAB has adopted a single form to calculate modernization eligibility, the Form SAB 50-03. This is the same form used for new construction applications. It may be downloaded from the OPSC Web site in a format that allows it to be printed as a blank form or completed on a computer and printed for submission to the OPSC. In order to complete the Form SAB 50-03, the district representative will need a completed site diagram for the applicable school which contains the following information:

- The number of permanent classrooms.
- The number of portable classrooms.
- The ages of all permanent and portable classrooms.
- The grade level of each classroom, i.e., K–6, 7–8, 9–12, non-severe, or severe.
- The square footage for each enclosed facility on the site may be necessary (see paragraph below and the instructions on the Form SAB 50-03 for more information).

The instructions on the Form SAB 50-03 will guide the district through the process of calculating the eligibility at that site for modernization. If all the buildings are over 25/20 years old for permanent/relocatable buildings respectively and eligible for modernization, the grant eligibility is simply the number of children that are or can be housed at a site, whichever is less. However, for cases where there is a mixture of classrooms that are under and over the modernization age limits, two optional calculation methods are provided. One option is to count those facilities that are over the age requirement and the children that can be housed in them. The second option is to develop a ratio based on either the square footage or the number of classrooms by comparing the square footage of overage to underage buildings or the number of

overage to underage classrooms on the site. The ratio is then applied to the number of children enrolled at the site. If the district selects the option using a ratio of square footage, it will be necessary to provide the square footage information on the site diagrams as well.

Helpful Hints:
Did you know that the OPSC provides the current workload list on its Web site?

Eligibility Application Approval

Once the district has completed part three of the Form SAB 50-03, they are ready to submit the modernization eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete before adding it to the workload list. A more detailed review will then be completed that may include an on-site visit to review the information included on the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

This page is intentionally blank.

Section 5
New Construction Funding

Introduction

After a district has established eligibility for a project as described in Section 4, the district may request funding for the design and construction of the facility. In most circumstances, the funding is approved after the district has acquired or identified a site for the project and after the plans for construction are approved by the Division of the State Architect (DSA) and the California Department of Education (CDE). The request for funding must be submitted prior to occupancy of any classroom in the construction contract for the project.

The funding for new construction projects is provided in the form of grants. The grants are made up of a new construction grant (pupil grant) and a number of supplemental grants. A brief description follows:

New Construction Grant. The new construction grant is intended to fund design, construction, testing, inspection, furniture and equipment, and other costs closely related to the actual construction of the school buildings. This amount is specified in law based on the grade level of the pupils served.

Supplemental Grants. Supplemental grants are special grants intended to recognize unique types of projects, geographic locations, and special project needs. These grants are based on formulas set forth in the School Facility Program (SFP) Regulations. There are many possible supplemental grants. All of them are discussed later in this section. Two of the most common are:

- Site Acquisition Grant—Funding for site purchase, relocation, escrow, and certain other site acquisition related costs.
- Site Development Grant—The cost related to preparing a site for construction, including grading and drainage. This grant also includes funding for certain off-site development items such as sidewalks, curbs and gutters, streets, and related improvements. General site work, such as onsite driveways, curbs and gutters, and parking are also allowable for new school projects and additions to existing school sites when additional acreage is acquired.

Each new construction project is reviewed and appropriate grants are applied by the Office of Public School Construction (OPSC). All new construction grants are matched equally by the district with local funding sources. In some cases, districts unable to contribute some or all of the local match may be eligible for financial hardship assistance. A district that intends to request financial hardship assistance, must obtain financial hardship status prior to submitting an application for funding. See Section 10, "Financial Hardship" for more information on this subject. Once the grants are determined for a project, a request is sent to the State Allocation Board (SAB) for a funding apportionment. After the apportionment is approved, the district may enter into a contract for the construction of the facility, if it has not already done so, and receive a release of the funds. To be eligible for funding, the new construction funding application must be submitted to the OPSC within 180 days of the district entering into a contract for construction of the facility.

In some cases, when a district has been approved for financial hardship assistance, the district may request a separate site or design apportionment. In this situation, the request may be made before plans are completed and approved by the DSA. Site and design funding is discussed later in this section. In addition, see Section 10, "Financial Hardship" for more information.

This section explains the funding application process, typical requirements, and how to determine the new construction grant amount. It is important to understand that the discussion in this section focuses on the most common situations. There are many variations that may apply to specific projects that can not be covered in this brief overview. As always, the district representative should meet with the OPSC project manager and discuss the district's plan in detail.

Available New Construction Funding

There are several types of funding requests that can be made under the new construction program. The district may request site and design apportionment separately when they meet Financial Hardship requirement or as a combined application when appropriate.

New Construction Adjusted Grant

A new construction adjusted grant is intended to provide the State's full share for all necessary project costs including the New Construction Grant (pupil grants), site acquisition, site utilities, off-site, and service site development. The new construction adjusted grant also includes applicable supplemental grants and adjustments as described later in this section. This grant is approved only after the site has been approved and the plans are also complete and fully approved.

Separate Design

Districts that qualify for financial hardship status may receive a separate apportionment for design costs. Design funding is intended to allow a district to hire an architect and prepare project plans for DSA approval. When the plans are complete and approved, the district may request the remaining new construction funding. The new construction adjusted grant will be reduced by the design apportionment previously made for the project.

Separate Site

Districts that qualify for financial hardship status may receive a separate apportionment for site acquisition. The site funding is intended to allow a district to acquire a site for the project. When the district is ready to request the remaining new construction funding, the new construction adjusted grant will be reduced by the site apportionment previously made for the project.

Separate Site—Environmental Hardship

If the Department of Toxic Substances Control (DTSC) certifies by letter that the time necessary to complete the remediation or removal of hazardous waste on the site to be acquired will exceed 180 days, the district may qualify as an environmental hardship. This means that the district is eligible for a separate apportionment for site acquisition, even though the district does not qualify as a financial hardship. More information is available in the SAB regulations and through the OPSC project manager.

Funding Process

After the district submits an eligibility application (see Section 4, "Application for Eligibility") the process of applying for funding is as follows:

- » the district submits a funding application package;
- » the OPSC reviews the package;
- » the SAB approves the apportionment;
- » the district requests a fund release and makes expenditures;
- » the district submits reports on expenditures;
- » the OPSC audits.

The application for new construction funding is made on a single form, the *Application for Funding* (Form SAB 50-04). The form serves as a vehicle to collect the information necessary to calculate the amount of grants applicable to the project, and also is a certification from the district regarding compliance with requirements of the law and the SFP Regulations. The district may submit the Form SAB 50-04 after the district has received approval by the CDE and the DSA of the proposed new construction project and the project site when applicable. In most cases, the district has determined its eligibility for new construction grants on the *Eligibility Determination* (Form SAB 50-03) before applying for funding. However, if the district has not established eligibility for the project previously, it may submit the eligibility package with the funding package.

The funding application is reviewed by the OPSC for completeness and placed on a statewide workload list in date received order. District representatives can view the workload list on the OPSC Web site at www.opsc.dgs.ca.gov. The applications for funding are then processed in date order for presentation to the SAB for consideration of an apportionment.

In some cases, the OPSC may find that an application lacks required information. The district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed, and the district may resubmit the application at any time once the needed information is available.

When the SAB has no funds to apportion, the SAB will continue to accept and process applications based on the date the application is ready for apportionment. The applications will be placed on an unfunded list. An application for funding that is placed on an unfunded list is eligible for apportionment pending the availability of future funding. If the application is approved for a separate site apportionment for Environmental Hardship, the project will receive a date on the unfunded list based on the date the environmental hardship site apportionment was made for the project.

Preparing an Application

A complete application package is an essential element of the process of receiving funding for the district's projects. The information provided is the basis for determining the grant amounts that the district will receive. The following discussion outlines the major elements of a complete application for a new construction adjusted grant. Note that the same information is not necessary for all application types.

The complete application for new construction funding must be accepted by the OPSC prior to occupancy of any classroom in the construction contract for the project in order to be eligible for funding.

New construction and modernization funding applications require the Form SAB 50-04 and must be based on a previous eligibility approval or must have the eligibility application as a part of the package (see Sec-

tion 4, "Application for Eligibility"). Also, please note that districts requiring financial hardship assistance must receive that status before filing a funding application (see Section 10, "Financial Hardship" for further information). The table below delineates the supporting documents necessary for each type of new construction funding request.

New Construction Funding Required Documents

DOCUMENT	TYPE OF FUNDING			
	DESIGN ONLY	SITE ONLY	SITE AND DESIGN	CONSTRUCTION
Appraisal of property to be acquired when appropriate* (preliminary appraisal of property for separate site)		✖	✖	✖
Escrow closing statement or court order				✖
CDE approval of site* (contingent CDE approval of site for separate site)		✖	✖	✖
Final DSA plan approval				✖
CDE approval of plans				✖
Cost estimate for site development†				✖
Plan‡ and cost estimate for off-site development when funding is requested				✖

* If this document has been submitted previously, it need not be resubmitted.

† SFP Regulations, Section 1859.76, "Additional Grant for Site Development Costs."

‡ Plan must be approved by the local entity, see *Architectural Submittal Guidelines* for further information.

Helpful Hint:
When a district seeks SFP funding, the law stipulates that a district must hold title or an acceptable lease to all property acquired, constructed, or improved.

Application for Funding (Form SAB 50-04)

The Form SAB 50-04 serves as a vehicle for districts to request funding for design, site and/or construction for all new construction projects. The form provides the OPSC with specific project information to determine the new construction adjusted grant including, but not limited to the type of application; the grade level of the project; the number of pupils the project will house; whether or not a site is being acquired; and if any additional or supplemental grants are being requested. To complete the Form SAB 50-04 and to make the required certifications, the district representative will need at least the following supporting information:

Appraisal, Escrow Closing Statement, CDE Site Approval

An appraisal, escrow closing statement or court order, and CDE site approval letter are required if the application includes site purchase. If not, only the CDE approval letter may be required. The documents are described in detail under the heading "Site Acquisition" in the section titled "Supplemental Grants".

DSA-Approved Plans and Specifications

All new construction plans and specifications must be approved by the DSA. The DSA approval must be current and valid at the time of submittal of the application for funding to the OPSC. In addition, all final plans and specifications for new construction, modernization, or alteration of any school building for which the district is seeking State funding requires DSA approval prior to signing a construction contract. The DSA approval must be current and valid at the time of submittal of the application for funding to the OPSC. If a

district enters into a contract for construction prior to receiving DSA approval of the plans and specifications, the project may not be eligible for State funding. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval. For more information, please refer to Education Code, Section 17072.30.

- As of October 2005, all funding applications must be accomplanied by the DSA Final Plan Approval Letter.
- Plans should include all work eligible for funding through SFP and should be approved by DSA. If plans are submitted in AutoCAD format, a copy of DSA approval letter is required.
- Plans to be submitted include those for Site, Civil, City/County Street Development, Architectural (along with portable facilities), Structural, Electrical, Plumbing, Mechanical, and Landscape.
- New plans will not be accepted during the review process once OPSC acknowledged the School District Project Application as a complete package.

Cost Estimate for Site Development

A detailed cost estimate is required if the district is requesting additional grants for site development in its new construction funding application. For more information, please refer to the heading "Site Development" in the section titled "Supplemental Grants", discussed later in this section.

District Certifications

As previously mentioned, the Form SAB 50-04 is also an official certification to a number of SFP requirements. The form and the instructions to the form provide specific detail about the certifications; however, some of the issues to which the district representative will have to certify are as follows:

- The district has established a "Restricted Maintenance Account" (see Section 13, "Additional SFP Requirements and Features" for more information).
- Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process (see Section 3, "Project Development Activities").
- The district will fund their share of the project.
- If this request is for a large new construction or a large modernization project, the district has consulted with the career technical advisory committee established pursuant to Education Code, Section 8070, and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code, Sections 51224, 51225.3(b) and 52336.1.
- All large new construction funding applications for comprehensive high schools must be accompanied by evidence of compliance with Education Code, Section 17070.95. Documentation may include any of the following:
  - *Minutes from a public meeting by the school district's governing board documenting the discussion with and the recommendations of the local CTEAC regarding the CTE facility needs assessment.*
  - *Minutes from the meeting with the local CTEAC regarding the CTE facility needs assessment and recommendations.*
  - *Letter from the local CTEAC to the school district that identifies the subject of the discussion, the CTE facility needs assessment, and recommendations.*
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to SFP Regulations, Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district.
- The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code, Section 1771.7, if the project is funded from Proposition 47 or 55 and the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003.
- Beginning with the 2005/2006 fiscal year, the district has complied with Education Code, Section 17070.75(e), by establishing a facilities inspection system to ensure that each of its schools is maintained in good repair (see Section 13, "Additional SFP Requirements and Features" for more information).

Finally, to reduce the need to submit extensive supporting documentation, the OPSC will ask that the architect of record or other design professional certify to the following:

» The date that the DSA approved the plans and specifications.
» That the cost estimate as submitted to the DSA for the work in the plans and specifications is at least 60 percent of the total grant provided by the total State and district matching share excluding any site acquisition costs provided.

CDE Approval of Final Plans

The plans submitted to the OPSC must have the approval of the CDE. The final plan approval letter from CDE must accompany the funding application.

New Construction Grant Amounts

The SFP was designed as a per-pupil grant program where each pupil, depending on the grade level, would receive a specific dollar amount. The new construction adjusted grant, at minimum, will consist of the new construction grant, which is prescribed in law relative to the grade level of the pupils. The grant can be increased by certain supplemental grants for which the district may be eligible. The following are the types of grants:

» New Construction Grant (pupil grants)
» Supplemental Grants

New Construction Grant

The new construction grant is intended to provide the State's share for necessary project costs including, but not limited to, funding for design, costs related to the approval of the plans and specifications by all required agencies, the construction of the buildings, general site development, educational technology, unconventional energy, change orders, tests, inspections, and furniture and equipment. The new construction grant does not provide for site acquisition, site utilities, off-site, and service site development as these costs vary due to location, size, topography, etc. The OPSC will review and determine these costs on a case-by-case basis, as discussed later in this section.

The new construction grant is based on the number of pupils in the project. There are a number of ways that the district can determine how many pupils will be assigned to a project, and therefore what the new construction grant will be. The most obvious way is by first determining the grade level of the project and then the number of classrooms to be included. Under the SFP, K–6 classrooms are loaded with 25 pupils, 7–12 classrooms are loaded with 27 pupils, severe classrooms are loaded with 9 pupils, and non-severe classrooms are loaded with 13 pupils. Assuming that the district has enough eligibility, it might decide to construct a ten-classroom addition along with bathrooms and other support facilities at an existing elementary school. The ten classrooms will house 250 children using the loading standards specified in the program. If the district has already established eligibility for at least that number of elementary students using the Form SAB 50-03, the district could request 250 grants for the project.

There may be a situation where the district may wish to ask for less grants than the classroom capacity of the project. For instance, the project described in the previous paragraph may be of relocatable construction and may be estimated to cost less than the amount of grants that would be generated by 250 students. The district may elect either of the following strategies:

- The district may reduce the grant request to fewer grants, yet still enough to completely fund the State share of the project. The advantage is that the district will retain the unused grants for a future project, perhaps at another site.
- The district may ask for all 250 grants, and use the grant amount not only to construct classrooms at the site, but also to construct other facility needs of the district at the site, such as administration, multi-purpose rooms, gymnasium, etc.
- The district may ask for all 250 grants, and use the savings from the project for other capital facilities projects in the district, provided the project is not receiving financial hardship assistance. The advantage to the district is that the project is built as planned, while other facilities needs are also met within the State funding for the original project. In this case, the district must ensure that the amount spent on the work in the plans and specifications for the original project equals at least 60 percent of the total State and local share of the project grants excluding any site acquisition costs provided. With this condition met, the district may use the savings on other district projects.

There are many variations on these approaches to determining grant amounts for a particular project. It is important that the district consult with the OPSC project manager to be sure that a specific approach is possible and within the guidelines of the law and regulations.

New Construction Grant Calculation

The new construction grant is determined by multiplying the pupils assigned to the project by the pupil grant established in law. The new construction grant is adjusted by the SAB annually (each January) based on the change in the Class B Construction Cost Index. The current amounts are as follows:

New Construction Basic Grant Amount

CLASSIFICATION	BASIC GRANT AMOUNT	COMMENTS
Elementary Pupil	$ 8,081	
Middle School Pupil	$ 8,546	Include grade six pupils if part of a 6–8 grade school.
High School Pupil	$10,873	
Special Day Class—Non-Severe	$16,095	
Special Day Class—Severe	$24,066	

The Special Day Class grant allowances are established at a level higher than basic new construction grant allowances as a means to cover building cost items such as enhanced or added electrical and plumbing fixtures, more accessible doors and grab bars, extra sinks, casework, restrooms, changing areas, living skills space and other facilities for students with exceptional needs.

Supplemental Grants

Supplemental grants are intended to recognize unique types of projects, geographic locations and special project needs. These grants are based on formulas set forth in the SFP Regulations. There are many possible supplemental grants as follows:

- Energy Efficiency
- Fire Code Requirements
- Geographic Location
- Labor Compliance Program

» Multi-level Construction
» New School Projects
» Project Assistance
» Replacement with Multi-Story Construction
» Site Acquisition
» Site Development
» Small High School Program
» Small Size Projects
» Special Education—Therapy
» Urban Locations, Impacted Sites, Security Requirements

The following is a brief explanation of the supplemental grants:

Energy Efficiency

A supplemental grant is available to districts with projects that have increased costs associated with plan design and other project components for school facility energy efficiency. The facilities in the proposed new construction project must exceed the nonresidential building energy efficiency standards as specified in Title 24, Part 6 of the California Code of Regulations by 15 percent. Current all energy efficiency funds have been exhausted. At the September 2006 SAB the remaining modernization energy funds were re-designated to fund the new construction energy projects.

Fire Code Requirements

The new construction grant will be increased for each pupil in a project that includes an automatic fire detection and alarm system. The current increase is as follows:

New Construction Grant Increase—Automatic Fire Detection and Alarm System

CLASSIFICATION	GRANT INCREASE
Elementary Pupil	$10
Middle School Pupil	$14
High School Pupil	$23

CLASSIFICATION	GRANT INCREASE
Special Day Class—Non-Severe	$30
Special Day Class—Severe	$44

The new construction grant will be increased for each pupil in a project that includes an automatic sprinkler system. The current increase is as follows:

New Construction Grant Increase—Automatic Sprinkler System

CLASSIFICATION	GRANT INCREASE
Elementary Pupil	$144
Middle School Pupil	$172
High School Pupil	$177

CLASSIFICATION	GRANT INCREASE
Special Day Class—Non-Severe	$305
Special Day Class—Severe	$454

The amounts shown above are the 50 percent State share and are adjusted annually in the same manner as the New Construction Grant.

Geographic Location

A supplemental grant is available to districts with projects that are located in areas of California that are remote, difficult to access, or lack a pool of contractors. A district may qualify and request an augmentation to the new construction grant due to their geographic location.[1]

Labor Compliance Program (LCP)

A labor compliance program, as specified by Labor Code, Section 1771.5, must be initiated and enforced for each project funded wholly or in part from Propositions 47 or 55 funds if the Notice to Proceed was issued on or after April 1, 2003. Additional funding is provided for these projects. The LCP grant is calculated on a sliding scale as follows:

Labor Compliance Program Grant

IF TOTAL PROJECT COST IS...		THEN THE TOTAL LCP COST IS...
AT LEAST	UP TO	
$ 0	$ 1 million	$ 16,000
$ 1 million	$ 2 million	$ 16,000 plus 0.016 multiplied by the amount over $1 million
$ 2 million	$ 3 million	$ 32,000 plus 0.0025 multiplied by the amount over $2 million
$ 3 million	$ 4 million	$ 34,500 plus 0.0015 multiplied by the amount over $3 million
$ 4 million	$ 6 million	$ 36,000 plus 0.0032 multiplied by the amount over $4 million
$ 6 million	$ 8 million	$ 42,400 plus 0.0031 multiplied by the amount over $6 million
$ 8 million	$13 million	$ 48,600 plus 0.0046 multiplied by the amount over $8 million
$13 million	$18 million	$ 71,600 plus 0.0044 multiplied by the amount over $13 million
$18 million	$48 million	$ 93,600 plus 0.0042 multiplied by the amount over $18 million
$48 million	N/A	$219,600 plus 0.004 multiplied by the amount over $48 million

The State's share will be 50 percent of the above result.

Multi-Level Construction

The SFP recognizes that districts face additional costs to construct multi-level school facilities on small sites. A supplemental grant is available for projects in densely populated areas, where site acquisition costs are high and land is scarce, to provide funds to alleviate and mitigate the impact of these small sites. If the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity, the new construction grant can be increased by 12 percent for each pupil housed in a multi-level building that will house pupils in all levels of the building.

[1] SFP Regulations, Section 1859.83, "Excessive Cost Hardship Grant."

New School Projects

Districts that will construct an entirely new school on a site without existing facilities may qualify for a supplemental grant. This grant is intended to provide funds to construct core facilities such as multi-purpose rooms, gymnasiums, libraries, kitchens, etc., for projects that have a minimal amount of classrooms, but not enough to generate a sufficient new construction grant to build these essential facilities. In March 2004, the SAB approved a separate new school allowance to meet the specific facility needs of alternative education schools, which are defined as community day, county community, county community day, and continuation high schools for the purposes of the SFP. The Alternative Education New School Allowance applies to all alternative education schools for which the plans and specifications were accepted by the DSA or after March 24, 2004. Please refer to the OPSC Web site for the current grant amounts.

Project Assistance

The SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The current additional grant of $5,168 may be used for costs associated with the preparation and submission of the SFP eligibility and funding applications, including costs related to support documentation such as site diagrams. The grant amount will be adjusted each year using the Class B index.

Replacement with Multi-Story Construction

As part of a SFP new construction project, a school district may demolish a single story facility and replace it with a multi-story facility on the same site. In addition to the new construction grant allowance, the SAB will provide a supplemental grant to fund 50 percent of the replacement cost of the single story facility(s) to be replaced provided that the site size is less than 75 percent of the recommended CDE site size, the pupil capacity at the site will be increased, the cost of the demolition and replacement is less than the cost of providing a new facility at a new site to house the increased pupil capacity, and the project has CDE approval.

Site Acquisition

The site acquisition grant can be used to acquire and develop new school sites or, under some circumstances, to reimburse or credit the district for a portion of the site acquisition costs originally borne by the district or in specific circumstances the current appraised value. Eligible costs for site acquisition are:

- Fifty percent of the lesser of the actual cost or the appraised value of the site.
- Fifty percent of the relocation cost.
- Two percent of the value of the site determined above, with a minimum of $25,000.
- Fifty percent of certain costs related to the DTSC review and oversight.
- Hazardous waste removal (within one and one half times the appraised value).

Note that if the district intends to use a site that was acquired in a priority one project under the Lease-Purchase Program (LPP), the OPSC will use the appraised value of the site as established under the LPP for the appraised value of the site under the SFP. The SFP apportionment will be offset by the LPP apportionment. A project that received site acquisition funds under the LPP as a priority two project is not eligible for site acquisition funds under the SFP.

Independent Appraisal Requirement. The district is required to submit one site appraisal with the Form SAB 50-04. A California licensed and duly-qualified appraiser must issue a current appraisal report for the proposed site using the Uniform Standards of Professional Appraisal Practice. The appraisal must be impartial and prepared for the district or its legal counsel.

The site must be appraised as if it were a clean site, safe from all contaminants in accordance with SFP Regulations, Section 1859.74.1, CDE guidelines, and Title 5, California Code of Regulations. The appraisal report must evaluate both the gross and net usable acreage and any severance damages.

Site improvements associated with grading the site to a mass graded or construction-ready condition without foundation or paving and proposed utilities stubbed to the site may be included in the appraisal. Other site improvements must be finished before close of escrow or 100 percent covered by a performance bond.

The appraisal date of valuation, or an update, may not predate by more than six months of the district's funding application to the OPSC. An SFP project which had the site funded as a LPP project shall use the value funded under the LPP.

DTSC Costs. Site acquisition costs may include up to 50 percent of the cost for the review, approval and oversight of the Phase One Environmental Site Assessment (POESA) and the Preliminary Endangerment Assessment (PEA). Note that these costs are prior to the actual clean-up costs, if any. Those costs may be included under some circumstances. See the paragraph entitled "Hazardous Waste Removal" below.

Hazardous Waste Removal. Site acquisition costs may be increased by up to one-half of the costs associated with the removal or remediation of hazardous waste on the site to be acquired. These costs may include the actual implementation of the response action required in the PEA, the cost of the preparation of the Response Action, and the cost for the DTSC review and oversight of the preparation and implementation of the Response Action. The increase in site acquisition may not exceed the difference between one and one half times the appraised value of the site as if no contamination existed and the actual cost of the contaminated site.

Relocation Expenses. Reasonable and necessary costs to relocate residential occupants and businesses from the proposed new school site, including purchasing fixtures and equipment, personal property, new machinery and equipment, and the installation of any improvements at the replacement residences or business locations are permitted as site acquisition costs.

Incidental Site and Hazardous Waste Removal for Leased Sites. If the application for funding includes a vacant leased site that was never used for school purposes, the site acquisition costs may be increased by up to one-half of the costs associated with the removal or remediation of hazardous waste on the site to be leased. These costs may include approved relocation expenses, the actual implementation of the Response Action required in the PEA, the cost of the preparation of the Response Action, and the cost for the DTSC review and oversight of the preparation and implementation of the Response Action. The increase in site acquisition may not exceed one and one half times the appraised value of the site determined by an appraisal made or updated no more than six months prior to the date the application was submitted to the OPSC.

Hazardous Waste Removal Required on an Existing School Site. Site acquisition funding may be available for the evaluation and response action in connection with hazardous substances at an existing school site in advance of submittal of the DSA approved plans.

Acquiring Title. Title to all property acquired, constructed, or improved with funds made available under the SFP must be held by the school district to which the SAB grants the funds. The title to the site need not be actually held by the district before funding; however, one of the following must be demonstrated:

- Purchase will be made from one or more private parties, companies, developers, or other entities, as evidenced by an escrow showing the pending transfer of ownership to the district.
- Court orders, especially orders of condemnation through the county court where the proposed new site lies, which include a Final Judgment, Stipulated Judgment and Order of Immediate Possession to allow occupancy, or Order of Prejudgement Possession.
- An escrow for the transfer of property in lieu of other legally required payments or fees due to the district. (Example: Districts sometimes obtain proposed new school site parcels from developers, with all or part of the "purchase" price comprised of the district forbearing from collecting school mitigation fees from the developers.)

Funding on Leased Land. The district may utilize leased sites with governmental agencies for certain specified periods of time. To receive new construction grants for facilities that are or will be located on real property leased by the district, the property must be leased from the federal government for a period of 25 years or another governmental agency for a period of 40 years. If the lease is with a governmental agency other than the federal government, a 30-year lease may be considered if there are no other educationally adequate sites available under a 40-year lease, the cost per year for a 30-year lease is not greater than a 40-year lease, or the district can provide satisfactory evidence to the SAB that a shorter term lease is necessary.

Site Development

In addition to the new construction grant, the SFP provides a supplemental grant for the purpose of developing the site where the project is to be located. Fifty percent of the site development costs are available for both new sites and for existing sites where additional facilities are being constructed with the exception of general site development. Funding for general site is allowable for new school projects and additions to existing sites, however, only when additional acreage is acquired. These development costs fall under four categories:

- Service site development improvements are performed within school property lines and may include eligible site clearance, rough grading, soil compaction, drainage, erosion control and multi-level, single level subterraean or under building parking structures. This portion of the site preparation is accomplished prior to the general site development and construction of buildings.
- Off-site improvements are located along the perimeter of two sides of the site including street grading and paving, storm drainage lines, curbs, gutters, sidewalks, and street lighting. These improvements are commonly dedicated for public use. If a district is requesting off-site improvements, the local entities having jurisdiction of areas where the off-site development is proposed must approve the related plans and specifications. These approved plans and specifications must be submitted to the OPSC at the time the application for funding is submitted.
- Utility service developments include improvements of water, sewer, gas, electric, and telephone from the closest existing utility connection.
- General site development includes onsite driveways, walks, parking, curbs and gutters, tennis/handball courts, running tracks, baseball, football, and soccer fields, etc. Funding for general site work is limited to $27,840 per usable acre plus a percentage of the base grant including specific additional grants (multi-level, automatic fire detection/alarm system, automatic sprinkler system, and excessive cost hardship grants). Districts receive a 6 percent increase for elementary and middle school projects and a 3.75 percent increase for high school projects.

It is important to understand that site development costs have restrictions on their use. The district representative should consult the SFP Regulations and the OPSC project manager if he or she is unsure if a particular item is an allowable cost before including the work in the project.

If a district is requesting a supplemental grant associated with site development on the Form SAB 50-04, verification must be submitted to support the request with the exception of general site development. To assist in gathering the supporting detail, the OPSC has developed a "Site Development Worksheet for Additional Grants" that is located on the OPSC Web site. The district may use this worksheet or similar method to submit this information to the OPSC.

Small High School Program

A supplemental grant is available for the construction of small high schools. The Small High School Program is a pilot program that will sunset on January 1, 2008 and is intended to fund small high schools with an enrollment of 500 pupils or less. Any new small high school may not be constructed where it would have otherwise been built due to sparse population in a geographical area and the applicant district must have a minimum of 500 pupil grants of new construction eligibility.

Small high school projects may be constructed on stand alone sites. Additionally, a small high school may be built on a site adjacent to an existing school, on the site of a large high school or on separate but adjacent sites sharing core facilities with the large high school. All small high schools funded from this program must have separate administrations and toilet area on the site.

Small Size Projects

A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds for core facilities and to make up for the lack of economies of scale when districts build small projects. The new construction grant can be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house over 100, but no more than 200 pupils.

Special Education—Therapy

The new construction grant will be increased for the area of therapy rooms, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for severely disabled individuals with exceptional needs. The current unit cost per square foot of therapy area is as follows:

- $252 per square foot for toilet facilities
- $139 per square foot for other facilities

The amounts shown above are the 50 percent State share and are adjusted annually in the same manner as the new construction grant.

Urban Locations, Security Requirements and Impacted Sites

Districts with projects in urban locations on impacted sites may request a supplemental grant if all of the following conditions are met:

- The useable site acreage for the project is 60 percent or less of the site size recommended by the CDE for the net school building capacity for the project plus any existing enrollment at the site, if any.
- At least 60 percent of the classrooms in the project construction plans are in multi-story facilities.
- For new construction of a new school site, the value of the site being acquired is at least $750,000 per useable acre. This condition does not apply to new construction additions to existing school sites.

Urban locations on impacted sites are generally in areas of high property values or high population density, creating an environment difficult for districts to acquire ample real property, which causes increased project costs uniquely associated with urban construction. Districts with projects on these impacted sites are also faced with extra security requirements. The supplemental grant provides funds for security fences, watchpersons, increased premiums for insurance for contractors, and storage or daily delivery of construction materials to prevent theft and vandalism. If a district requests grants due to these circumstances, the OPSC will verify the district's eligibility pursuant to the CDE Final Plan Approval letter and by OPSC's review of the project construction plans and site appraisal.

If the above criteria are met, the urban supplemental grant is calculated on a sliding scale as follows:

New Construction Urban Grant Adjustment

IF...	THEN...
the useable acres are 60 percent of the CDE recommended site size, as described above...	the urban grant adjustment is 15 percent of the New Construction Grant and of the funding for additional grants for replaced facilities*, small size projects† and new school projects‡, and a 1.166 percent increase to the urban grant adjustment for each percentage decrease in the CDE recommended site size below 60 percent.

For new construction of a new school site, the adjustment shall not exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the number of the pupil grants requested in the application§. This limit does not apply to new construction additions to existing school sites.

* SFP Regulations, Section 1859.73.2, "New Construction Additional Grant for Replaced Facilities"

† SFP Regulations, Section 1859.83(b), "Excessive Cost for Projects that House No More than 200 Pupils (Small Size Project)"

‡ SFP Regulations, Section 1859.83(c), "Excessive Cost to Construct a New School Project"

§ SFP Regulations, Section 1859.83(d)(2)(A), "Excessive Cost Due to Urban Location, Security Requirements and Impacted Site"

District Project Contribution

Every new construction application is a joint funding effort between the local school district and the State through the SFP. The State grant is discussed in the section entitled "New Construction Grant Amounts", earlier in this section. The total State grant represents 50 percent of the total project cost, with the district contributing the remaining 50 percent of the total project cost. The district contribution may come from virtually any source. The sole exception is that when savings from another SFP project is used as a match, the savings must be from a new construction project only. This restriction exists due to legal requirements pertaining to the bond funds, which the State uses as a program-funding source.

The district need not have the entire 50 percent local contribution on deposit at the time that the project apportionment is made. However, when the project fund release is requested, the district must certify that the district's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. Thus the district has considerable flexibility in how the local share is arranged and contributed. The district representative should be aware, however, that regardless of when the share is contributed to the project, at closeout the district must be able to show that 50 percent of the expenditures on the project were from local sources. If the district is unable to demonstrate the 50 percent expenditure requirement has been met, the apportionment will be reduced.

Unable to Meet the Contribution

Districts that are unable to contribute the 50 percent local share of a project can pursue financial assistance through the financial hardship provisions of the SFP. Districts must submit financial data to the OPSC for pre-approval of financial hardship status (see Section 10, "Financial Hardship") before submitting a funding application. In addition, this pre-approval enables districts to request a separate apportionment for site acquisition and/or design costs, if necessary, any time after the application for eligibility determination has been filed and before its financial hardship status expires.

Effects of Reorganization

Districts who are affected by a reorganization election on or after November 4, 1998, may not file a funding application for new construction until after the notification of the reorganization election. If the district had established new construction eligibility prior to reorganization, it must adjust the baseline eligibility on the *Eligibility Determination* (Form SAB 50-03) prior to filing new applications. Alternatively, the district can choose to certify that the reorganization does not result in a loss of eligibility for the project requesting funding. Districts that are newly created by the result of a reorganization can submit a funding application after approval of the election by the CDE.

SAB Approval Process

The applications for funding are presented to the SAB for approval in the order of their OPSC receipt date. The SAB approval (action) can either be an apportionment or "unfunded" approval, depending on the availability of funds for new construction.

Fund Release

After the funding application is apportioned by the SAB, the next step in the process is the actual fund release to the County School Facilities Fund for use by the district.

The SFP grant is processed for release when the district submits a *Fund Release Authorization* (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed. In addition, the SFP Fund Release Report is posted monthly on the OPSC Web site. This report indicates the claim schedule number, the date the funds were released, and the dollar amount released.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the SFP grant apportionment by the SAB, or the entire new construction or modernization grant will be rescinded without further SAB action. If this should happen, the pupils housed in the project will be added back to the district's eligibility and the district may re-file the application at any future time.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

References

» California Code of Regulations, Section 6000, et seq.
» SFP Regulations, Section 1859.74, "Additional Grant for Site Acquisition" and 1859.74.1, "Site Acquisition Guidelines."
» SFP Regulations, Section 1859.83, "Excessive Cost Hardship Grant".

Section 6
Charter School Facilities

Introduction

In 2002, Article 12 in Assembly Bill (AB) 14, established a pilot program to provide charter schools with funding to construct new facilities, known as the "Charter School Facilities Program" (CSFP). With the successful passage of Proposition 47, this program received $100 million in bond funding. In 2004, Senate Bill 15 was passed to make revisions to the CSFP in order to maximize the number of projects funded with an additional $300 million in bond funding made available with the passage of Proposition 55. The most recent bill, AB 127, was passed in 2006 to further revise the CSFP and an additional $500 million was made available with the passage of Proposition 1D. The CSFP permits a charter school or school district filing on behalf of a charter to apply for a preliminary apportionment (reservation of funds) for the construction of new facilities and/or rehabilitation of existing district owned facilities that are at least 15 years old. To qualify for funding, a charter must be deemed financially sound by the California School Finance Authority (CSFA).

The preliminary apportionment for a CSFP project must be converted within a four-year period to an adjusted grant apportionment meeting all the School Facilities Program (SFP) criteria, unless a single one-year extension is granted.

Eligibility

To apply for funding under Proposition 47 and 55, the school district in which the charter is physically located must have had SFP new construction eligibility. Proposition 1D removed this requirement. Now, new construction eligibility is no longer required. However, the school district in which the charter school is physically located must certify to the number of district unhoused students a charter school will house in a new construction project. A charter school applying on its own behalf may apply once it has notified the superintendent and governing board of the district, where it is physically located, of its intent to apply in writing (with proof of delivery) 30 days prior to submitting the preliminary application to the Office of Public School Construction (OPSC). The notice to the district shall include the number of pupils the charter intends to house, a request that the school district certify to the number of the district's unhoused pupils that the charter project will house and a request that the district update its new construction eligibility for current enrollment.

The $100 million provided in Proposition 47 for the program was exhausted in July 2003. The next $300 million provided in Proposition 55 was exhausted in February, 2005. To apply for the funds made available with the passage of Proposition 1D, charter schools and districts must submit an *Application for Charter School Preliminary Apportionment* (Form SAB 50-09), to the OPSC by June 5, 2007. In addition, if funds become available through over reservation of preliminary apportionment or lease payments, the State Allocation Board (SAB) may establish additional application periods.

Application Process

A complete application is an essential element in the process of receiving a preliminary apportionment for the charter school or district's project. The information provided is the basis for determining the apportionment amounts that the charter school or district on behalf of the charter school will receive. The form provides the OPSC with the general project information to determine the future new construction or rehabilitation adjusted grant; the grade level of the project, the number of SFP pupils the project will serve, whether or not a site is to be acquired, and if any supplemental grants are requested.

The applicant will need to submit a Form SAB 50-09, and all other supporting documents (i.e., supporting historical documents for allowances requested on application, architect's drawing of existing facilities to be rehabilitated, etc.).

Once the OPSC receives the preliminary application, an initial review will be conducted to ensure that the pupil grants or rehabilitation square footage requested is commensurate with the project being built. In addition, the allowance requested on the application will be subject to review. In conjunction, the CSFA will be determining the financial soundness of the applicant. For further information regarding the criteria for financial soundness, please contact CSFA at www.treasurer.ca.gov/csfa.

For additional detail, please review the general and specific instructions on the Form SAB 50-09 and the application submittal requirements available on the OPSC Web site.

Funding Criteria

If the estimated total apportionment of all financially sound applicants approved by CSFA exceed the funds available, the SAB shall provide preliminary apportionments using the following criteria:

- Representative of the various geographical regions of the State.
- Representative of urban, rural, and suburban regions of the State.
- Representative of large, medium, and small charter schools throughout the State.
- Representative of the various grade levels of the pupils served by charter school applications.

Within each category above, preference is to be given to charters in overcrowded school districts, charters in low-income areas, not-for-profit charters, and for the use of existing district facilities. A preference points calculation system, based on the criteria set above, will be used in determining the projects that will be funded from each category. If more than one application is received that has the same criteria within a category, the SAB will fund based on which project has the highest preference points.

For the purposes of determining the preference points given for projects in overcrowded districts, the applicant will need to submit an *Enrollment Certification/Projection* (Form SAB 50-01), for the school district and any supporting documents required. An *Existing School Building Capacity* (Form SAB 50-02), and *Eligibility Determination* (Form SAB 50-03), will not need to be submitted unless the school district has not established new construction eligibility under the SFP. If the eligibility has not been established, the eligibility documents necessary to establish new construction eligibility will have to be submitted prior to the end of the filing period. (See Section 4, "Application for Eligibility.")

Preliminary Apportionment Components

The grants provided at the preliminary apportionment consist of the following:

NEW CONSTRUCTION	REHABILITATION
• Per Pupil base grant amount • Multi-level Construction Grant Amount • Site Acquisition • Site Development • Supplemental Grants • Inflator Factor	• Grant based on square footage • Elevators • Supplemental Grants • Inflator Factor

This amount shall then be the recommended preliminary apportionment for the proposed CSFP project presented to the SAB for a reservation of funds.

Preliminary Apportionment Determination for New Construction

To determine the funding for a new construction project, the preliminary apportionment would be divided into "construction" costs and "site acquisition" costs, as shown below:

CONSTRUCTION COSTS (FULL GRANT)	SITE ACQUISITION COSTS
• Base Grant • Multi-level Construction • Site Development • General Site Development • Small Size Project • Urban Allowance • Geographic Percentage Factor • Inflator Factor	• Site purchase • Site other 4 Percent • Hazardous Material Clean-up • Relocation and Department of Toxic Substance Control fees

Please see Section 5, "New Construction Funding," for a full explanation of the construction costs grants. The OPSC also has a calculator on its website for estimating the CSFP grant.

The current CSFP grant amounts are as follows:

CSFP Grant Amounts

CLASSIFICATION	CSFP PUPIL GRANTS (2007)
Elementary	$ 8,120
Middle School	$ 8,597
High School	$11,229

CLASSIFICATION	CSFP PUPIL GRANTS (2007)
Special Day Class—Non-Severe	$17,304
Special Day Class—Severe	$25,874

If a district requests a preliminary apportionment that includes a reservation for multi-level classroom construction, the CSFP pupil base grant will be increased by 12 percent to reserve the maximum allowance.

If the request for a preliminary apportionment includes estimated site development costs, the allowance shall be determined based upon either the State default amount of $70,000 per proposed net useable acre,

actual, or historical cost. The estimated site development cost shall be the amount for anticipated service-site, off-site and/or utilities for the project. For projects that are acquiring additional acreage, a general site allowance may be requested.

A district may request estimated excessive hardship costs for Geographic Location, Small Size Project or Urban Location, Security Requirements and Impacted Site.

The preliminary apportionment consisting of all applicable estimated allowances shall be increased by 32 percent in anticipation of cost increases in future years. The inflator factor is based upon the average per year Marshall Swift Class B Construction Cost Index. Site acquisition costs will not be subject to the inflator factor. This increase is not applicable to Proposition 55 apportionments.

Helpful Hint:
If you plan to file an application for the 2007 filing period, please contact your project manager for more information.

The preliminary apportionment for the estimated site acquisition shall be determined by the submittal of an appraisal or preliminary appraisal, when available. In addition, a separate allowance is available for toxic sites. The appraisal or preliminary appraisal should be made or updated no more than six months prior to the application submittal to the OPSC. In cases where a specific site has not been identified for the project, the median cost of the consummated sales transactions within the general location multiplied by the proposed net useable acreage to be acquired shall determine the property value reservation. In either case, the applicant must obtain a preliminary recommended site size letter from the California Department of Education (CDE). Before determining the median cost, the information for recorded sale transactions should be expressed in a per acre amount.

Additionally, the property value will be increased by four percent for title, escrow and survey fees. An allowance for estimated relocation and Department of Toxic Substance Control (DTSC) costs may be included.

Preliminary Apportionment Determination for Rehabilitation

The preliminary apportionment for a rehabilitation project and supplemental grants, if eligible, are shown below:

- Grant based on the square footage in the project
- Small Size Project
- Urban Allowance
- Geographic Percentage Factor
- Elevators
- Inflator Factor

The amount of funding will be determined by first adding the square footage of all the minimum essential facilities (multi-purpose room, library, gym or administration) and the square footage for the number of classrooms the charter school is entitled to use based on the State loading standards. The square footage in the project would then be multiplied by the current rehabilitation cost standard which is $140 per non-toilet area square foot and $252 for toilet square footage. This grant amount cannot exceed what a new construction project would receive based on the number and grade level of students to be served by the rehabilitation charter school project.

A district may request estimated excessive hardship costs for Geographic Location, Small Size Project, elevators or Urban Location, Security Requirements and Impacted Site.

The preliminary apportionment consisting of all applicable estimated allowances shall be increased in anticipation of cost increases in future years. The inflator factor is based upon the average per year Marshall Swift Class B Construction Cost Index.

Apportionment Conversion

The preliminary apportionment for a CSFP project must be converted within a four-year period to an adjusted grant apportionment meeting all the School Facilities Program (SFP) new construction program criteria required for such an apportionment, unless a single one-year extension is granted. A final apportionment request includes an *Application for Funding* (Form SAB 50-04) and all other documentation required for a complete adjusted grant application under the SFP provisions (see Section 5). At the time a new construction project is converted, the pupil request cannot exceed the number of pupils requested at the time of preliminary apportionment. Likewise, at the time a rehabilitation project is converted, the square footage cannot exceed the square footage requested at the time of preliminary apportionment.

Project Reductions/Increases

Once an application is submitted for a final apportionment, the project costs may be adjusted per the following:

Project Cost Adjustments

<table>
<tr><th rowspan="2">IF...</th><th colspan="3">THEN...</th></tr>
<tr><th>PROPOSITION 47</th><th>PROPOSITION 55</th><th>PROPOSITION 1D</th></tr>
<tr><td>Preliminary apportionment sufficient to do project...</td><td colspan="3">...project cost remains the same and final apportionment Board item will reflect preliminary apportionment amounts.</td></tr>
<tr><td>Preliminary apportionment was more than needed...</td><td colspan="3">...the overpayment shall be adjusted to reflect actual project costs on the final apportionment SAB item and the difference shall be returned to the unrestricted account to be used for other charter school facility purposes.</td></tr>
<tr><td>Preliminary apportionment was insufficient and unrestricted funds remain in the account...</td><td>...a district may receive a project increase for eligible costs.</td><td rowspan="2">...the charter or district must come up with alternate means to complete the project. At the point of conversion, the preliminary apportionment amount will be the full and final apportionment.</td><td>...a district may receive a project increase for eligible costs.</td></tr>
<tr><td>Preliminary apportionment was insufficient and no unrestricted funds remain in the account...</td><td>...the preliminary apportionment amount will be the full and final apportionment. A district may elect to monitor the funds and wait until funds become available to convert the apportionment, provided it is before the four-year deadline.</td><td>...the preliminary apportionment amount will be the full and final apportionment. A district may elect to monitor the funds and wait until funds become available to convert the apportionment, provided it is before the four-year deadline.</td></tr>
</table>

Fund Release

Senate Bill 15 and AB 127 included provisions to allow advanced fund releases for site acquisition and separate design funding for the preliminary apportionments granted under Proposition 55 and Proposition 1D provided that the Charter School Agreements have been executed. The total advanced fund release for design funding can equal up to 20 percent of the preliminary apportionment total construction costs. The advanced fund release for site acquisition may be for up to the amount requested on the preliminary apportionment.

The CSFP provisions for a preliminary apportionment under Proposition 47 do not authorize any fund releases prior to submitting an application for final apportionment. Therefore, once a preliminary apportionment is received, all charter schools or districts on behalf of charter schools will need to ensure they can cover any costs incurred prior to filing an application for final apportionment.

Once a preliminary apportionment is converted to a final apportionment, the applicant has 18 months to apply for a fund release.

Closeout

When a CSFP project converts to a final apportionment, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the final apportionment was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a middle or high school project, or when the school district declares the project complete, at which time final expenditure reports must be submitted. Any project savings must be returned to the State.

To learn more about the CSFP program, contact your OPSC project manager or visit the OPSC Web site at www.opsc.dgs.ca.gov.

Section 7
Critically Overcrowded School Facilities

Introduction

The Critically Overcrowded School Facilities (COS) program was created by Assembly Bill (AB) 16 (Hertzberg) in 2002 and is a significant addition to the School Facilities Program (SFP). The COS program permits school districts with critically overcrowded school sites, as determined by the California Department of Education (CDE), to apply for a preliminary apportionment (reservation of funds) for new construction projects to relieve overcrowding. The COS program's preliminary apportionment serves only as a reservation of funds for future State assistance in the form of grants. The preliminary apportionment for a COS project must be converted within a four-year period to a new construction adjusted grant apportionment meeting all the SFP new construction program criteria required for such an apportionment, unless a single one-year extension is granted.

Project Eligibility

A district with SFP new construction eligibility established as described in Section 4 and critically overcrowded school sites included on a list of source schools as determined by the CDE may apply for a preliminary apportionment for projects to relieve overcrowding. For information regarding the CDE Source School List contact Mr. Fred Yeager at 916.327.7148 or visit the CDE Web site at www.cde.ca.gov.

An *Application for Preliminary Apportionment* (Form SAB 50-08) may be submitted to the Office of Public School Construction (OPSC) between November 5, 2002 and May 1, 2003 for projects to be funded with the proceeds of the November 5, 2002 bond or 60 days prior to and 120 days after the 2004 direct primary election or the 2004 statewide general election as appropriate for projects to be funded with those bond proceeds. A critically overcrowded school facilities project must:

- Relieve overcrowding by increasing the pupil capacity of the district and may be either a stand alone new school project or an addition to an existing school site.
- Identify at least 75 percent of the proposed pupil occupancy of the project as coming from a source school(s).
- Be located within either the attendance area or a one-mile radius of an elementary source school ; or, for a secondary source school, within the attendance area or a three-mile radius. The CDE may grant a variance from the distance maximums if the district can demonstrate that the variance is necessary to adequately provide facilities for the identified source school pupils.

Source Schools

To qualify as a source school a school site utilizing the 2001/2002 California Basic Educational Data System (CBEDS) enrollment must have pupil density greater than 115 pupils per acre for grades Kindergarten to six and 90 pupils per acre for grades seven to twelve. The CDE is responsible for determining and maintaining the list of source schools. A district may report their school site information to the CDE by submitting

SFPD Form 4.16 (*Certification of School Site Net Useable Acres*). For a copy of the SFPD Form 4.16 and additional information regarding the CDE source school list, please visit the School Facilities section of the CDE Web site at www.cde.ca.gov.

Once included on the CDE source school list, determine a source school's pupil eligibility or Qualifying Pupils, by subtracting the school's site density at 150 percent of the CDE recommended pupils per acre from its latest CBEDS enrollment. The remainder is the number of Qualifying Pupils at the source school site, which may be used to meet the project eligibility requirements above. The source school Qualifying Pupils eligibility amounts will be tracked separately and adjusted for changes in future enrollment, site density, preliminary apportionments and rescinded apportionments.

Preparing An Application

A complete application is an essential element in the process of receiving a preliminary apportionment for the district's project. The information provided is the basis for determining the apportionment amounts that the district will receive. All applications must be based on a previous SFP new construction eligibility approval or must have the eligibility application as a part of the package (see Section 4, "Application for Eligibility"). Please note district's requesting financial hardship assistance must receive that status prior to filing an application (see Section 10, "Financial Hardship"). The Form SAB 50-08 serves as a vehicle for districts to request a preliminary apportionment for a new construction project. The form provides the OPSC with the general project information to determine the future new construction adjusted grant; the grade level of the project, the number of SFP and source school Qualifying Pupils the project will serve, whether or not a site is to be acquired, and if any supplemental grants are requested. To complete the Form SAB 50-08 the district representative will need some or all of the following information.

- Appraisal, Preliminary Appraisal, or Median Cost valuation of the property to be acquired.
- Relocation and Department of Toxic Substances Control cost documents.
- Cost Estimate for site development and approved site development and off-site plans (to substantiate actual or historical cost submittals).
- A copy of the certified CDE Source School List pages or CDE Source School certification letter.
- Copy of the latest information for the Source School(s) submitted approximately October 15th of each year to the California Department of Education to complete the California Basic Educational Data System (CBEDS).

For additional detail, please review the General and Specific instructions on the Form SAB 50-08 and the Application Submittal Requirements available on the OPSC Web site.

Preliminary Apportionment Components

A COS preliminary apportionment is intended to provide the estimated future State's share for all necessary project costs including site acquisition, site development and supplemental allowances. A district may request a preliminary apportionment for the following:

- COS Pupil Grants (New Construction Grant (per pupil) plus the increase for Fire Code requirements)
- Multi-level Classroom Construction
- Site Acquisition
- Site Development
- Project Increases
- Financial Hardship
- Inflation Factor

The COS Pupil Grant is calculated by multiplying the SFP pupils assigned to the project by the per-pupil grants established in law and the increase for Fire Code requirements. The COS Pupil Grants are adjusted by the State Allocation Board (SAB) annually (each January) based on the change in the Class B Construction Cost Index. The current COS grant amounts are as follows:

Current COS Grant Amounts

CLASSIFICATION	COS PUPIL GRANTS
Elementary	$ 8,091
Middle School	$ 8,560
High School	$10,896

CLASSIFICATION	COS PUPIL GRANTS
Special Day Class—Non-Severe	$16,125
Special Day Class—Severe	$24,110

If a district requests a preliminary apportionment that includes multi-level classroom construction, the New Construction Grant will be increased by 12 percent to reserve the maximum allowance.

The preliminary apportionment for the estimated site acquisition shall be determined by the submittal of an appraisal or preliminary appraisal, when available. The appraisal or preliminary appraisal should be made or updated no more than six months prior to the application submittal to the OPSC. In cases where a specific site has not been identified for the project; the median cost of the consummated sales transactions within the general location area multiplied by the proposed net useable acreage to be acquired shall determine the property value reservation. The proposed acquisition acreage amount must be compatible with CDE standards; and, before determining the median cost, the information for recorded sale transactions should be expressed in a per acre amount. In addition the property value will be increased by four percent for title, escrow and survey fees and by one-half for hazardous material/waste removal and remediation cost. An allowance for estimated relocation and DTSC costs may be requested, this will be based on either the State's default allowance of 21 percent of the property value, actual, or historical cost information.

If the request for a preliminary apportionment includes estimated site development costs, the allowance shall be determined based upon either the State's default amount of $70,000 per proposed net useable acre, actual, or historical cost. The estimated site development cost shall be the amount for anticipated service-site, off-site and/or utilities for the project.

A district may request estimated excessive hardship costs for Geographic Location, Small New School or Urban Location, Security Requirements and Impacted Site.

If the district has a valid financial hardship status for the COS project, the estimated State share amount shall be doubled to provide a reservation for the estimated district's matching share assistance. When the financial hardship review has determined that the district has contribution amounts, the preliminary apportionment amount will be reduced by that amount. However, before the preliminary apportionment is converted to a final apportionment, the district must re-qualify financial hardship status to determine its eligibility and contribution amount.

Apportionment Conversion

Converting a preliminary apportionment to a final apportionment request includes an *Application for Funding* (Form SAB 50-04) and all other documentation required for a complete new construction adjusted grant application under the SFP provisions (see Section 5, "New Construction Funding"). In addition, the pupils requested on the Form SAB 50-04 must be no less than 75 percent of and cannot exceed the number of pupils requested on the Form SAB 50-08. When a district converts the preliminary apportionment to a final apportionment the project must still be supported by SFP new construction eligibility; however, the Source School(s) Qualifying Pupil eligibility will not be re-evaluated. If the project is not currently supported by SFP new construction eligibility, Assembly Bills 2950 (Chapter 898, Statutes 2004) and 491 (Chapter 710, Statutes 2005) provide for an "alternative eligibility method", such as current enrollment, current residency data or a projection of residency data to justify the project. A school district requesting financial hardship status must qualify for that status and have all Capital Project Fund monies analyzed to determine if the school district is able to contribute toward its project.

Project Increases

When an application for final apportionment is made, that preliminary apportionment may be adjusted for increases only if there are sufficient reserve funds available in the COS facilities account to fund the increases. If reserve funds are not available, the increase amount will be placed on a "Final Apportionment Unfunded List" until such time that funds may become available within the COS facilities account to apportion the increases. However, if funds do not become available and the maximum time frame of five years has expired, the original preliminary apportionment becomes a full and final apportionment.

SAB Approval Process

If funds are insufficient to fully fund all of the preliminary applications received during an application filing period, the SAB shall first apportion to those projects that would house pupils from source schools with the highest density levels relative to the CDE standard.

Substantial Progress

Prior to converting a preliminary apportionment to a final apportionment, the district must report annually to the SAB on the progress of the COS project. The local governing school board must hold a public hearing annually discussing the progress toward completing the project. Included in the first annual report to the SAB, the district shall certify that the CDE has determined there is at least one approvable and adequate site for the COS project within the identified general location area. If the school district cannot certify to the approvable site, then the preliminary apportionment will be rescinded.

At the end of the fourth year, if a school district is unable to submit its application for final apportionment, it may apply for a single one-year extension provided that the COS project has a CDE contingent or final site approval and the final construction plans have been submitted to DSA for review and approval; or other evidence satisfactory to the SAB that substantial progress has been made towards completing the requirements for filing an application for final apportionment.

Fund Release

After completing the substantial progress requirements for the first annual report to the SAB, a district may request an advanced release of funds from a preliminary apportionment when certain criteria are met. An advanced fund release for design and/or site acquisition may be requested by districts with approved financial hardship status. If applicable, an advanced fund release for an enviromental hardship site aquisition may be requested for any project. Advanced fund releases may be requested by submitting a complete *Fund Release Authorization* (Form SAB 50-05). If the advanced request includes the release of funds for site acquisition, the district must also submit a Form SAB 50-08 to determine eligible costs. Once a preliminary apportionment is received, all districts will need to ensure they can cover any costs incurred, taking into account any advanced fund releases, prior to filing an application for final apportionment.

Closeout

When a COS project converts to a final apportionment, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the final apportionment was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a high school project, or when the school district declares the project complete, at which time final expenditure reports must be submitted.

To learn more about the COS program, contact your OPSC project manager or visit the OPSC Web site at www.opsc.dgs.ca.gov.

This page is intentionally blank.

Section 8

Joint-Use Projects

Introduction

Senate Bill 15 amended the Joint-Use Program created by Assembly Bill 16 under the School Facility Program (SFP). Fifty million dollars was made available and partly apportioned in July 2003 for joint-use projects, and another $50 million was made available for apportionment at the August 2004 State Allocation Board (SAB), due to Proposition 55 passing in March 2004. These funds were partly apportioned in July 2005 and August 2006. An additional $29 million was made available for apportionment due to Proposition 1D passing in November 2006. Proposition 1D also provided the SAB authority to transfer up to $21 million in prior bond funds for the purpose of funding joint-use projects.

Qualifying projects will be submitted to the July 2007 SAB meeting for apportionment. If joint-use funds remain after the current funding cycle, they will be available for apportionment for qualifying joint-use projects at the July 2008 SAB meeting.

This program allows a school district to utilize funds from a joint-use partner to build a joint-use project the district would not otherwise be able to build due to lack of financial resources. There are two types of joint-use projects that the district may apply for, which are referred to as Type I and Type II.

A Type I joint-use project is part of a qualifying new construction project that will increase the size, creates extra cost, or does both beyond that necessary for school use of the:

- Multipurpose room
- Gymnasium
- Childcare facility
- Library
- Teacher Education facility

A Type II joint-use project is a stand-alone project or part of a modernization project located at a school site that does not have the type of facility or the existing facility is inadequate and will reconfigure[1] existing school buildings, construct new school buildings, or both to provide for:

- Multipurpose room
- Gymnasium
- Childcare facility
- Library

[1] Reconfigure means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building and any necessary replacement of displaced classrooms or other Minimum Essential Facility (MEF). Reconfiguring an existing school building must not reduce the district's capacity or displace another MEF. An inadequate MEF must not be constructed to replace a reconfigured MEF. In any case involving the replacement of lost capacity or a minimum essential facility due to the reconfiguration of an existing building, the replacement must be a part of the plans submitted in support of the joint-use application, must occur concurrently, and cannot be part of a SFP new construction application.

» Teacher Education facility
» Pupil Academic Achievement facility[2]

The funding for joint-use projects is provided in the form of grants. With the exception of a Type I (Extra Cost), the grants are made up of a base grant and a number of supplemental grants. For a Type I (Extra Cost) project, the grant is a straight dollar amount based upon the cost estimate. The State share for a joint-use project is 50 percent of the eligible project costs, with the joint-use partner contributing a minimum of 25 percent of the eligible project costs and the district contributing 25 percent of the eligible project costs. If the district has passed a bond which specifies that the monies are to be used specifically for the joint-use project, the district may provide up to the full 50 percent local share.

The district must have joint-use eligibility and square footage eligibility (except for a Type I, Extra Cost) for the type of project they are applying for, before they can request joint-use funding. This section explains the eligibility requirements for each type of joint-use project, the funding application process, and how to determine the joint-use grant. This section focuses on the most common situations. Individual projects may have variations that are not covered in this section. The district representative is encouraged to contact the Office of Public School Construction (OPSC) project manager to discuss specific project details.

Project Eligibility

Before a district can submit an application for funding, the project must have project eligibility. Project eligibility is different for the two types of joint-use projects.

Type I Project Eligibility

To qualify as a Type I joint-use project, the district must meet the following criteria:

» The Joint-Use Partner is a governmental agency, an institution of Higher Education, or a nonprofit organization.
» The project increases the size, creates extra cost, or does both for the:
  – *Multipurpose room*
  – *Gymnasium*
  – *Childcare facility*
  – *Library*
  – *Teacher Education facility*
» The district has entered into an approvable Joint-Use Agreement that meets the criteria of Education Code, Section 17077.42
» The joint-use project is part of a qualifying SFP new construction application
» The project has Square Footage Eligibility as specified in SFP Regulations, Section 1859.124 (except a Type I Extra Cost project)
» The facility is located at the school site of the SFP project
» The construction contract was executed after April 29, 2002
» The project has DSA approved plans
» The project has California Department of Education (CDE) approval of the plans

[2] Pupil Academic Achievement may be grandfathered in if the plans are accepted by the Division of the State Architect for review and approval prior to January 1, 2004.

Type II Project Eligibility

To qualify as a Type II joint-use project, the district must meet the following criteria:

- The Joint-Use Partner is a governmental agency, institution of Higher Education, or a nonprofit organization.
- The project reconfigures existing school buildings, constructs new buildings, or both to provide for the:
  - *Multipurpose room*
  - *Gymnasium*
  - *Childcare facility*
  - *Library*
  - *Teacher Education facility*
  - *Pupil Academic Achievement facility*[3]
- The district has entered into an approvable Joint-Use Agreement that meets the criteria of Education Code, Section 17077.42
- The project to reconfigure an existing building is part of a qualifying SFP modernization application located at the school site of the SFP project, or
- The project to reconfigure or construct a new school building is a stand-alone project located on the public K–12 school site
- The project has square footage eligibility as specified in SFP Regulations, Section 1859.124
- The school site does not have the type of facility or the existing facility is inadequate
- The construction contract was executed after April 29, 2002
- The project has DSA approved plans and CDE final plan approval if the project is part of a SFP modernization application, or
- The project has preliminary plans and CDE approval of the preliminary plans if it is a stand-alone project

Funding Process

Subject to available funds, applications are accepted for upcoming funding cycles from June 1st through May 31st each year.

A district may submit more than one application for each type. Type I Joint-Use projects are funded first and Type II Joint-Use projects are funded last. The district's first application within each type of joint-use project is ranked and funded with other district's first applications in date-received order. The district's second application is then ranked and funded with other district's second application in date-received order, and so on within each type of joint-use project, until funds are exhausted.

The following demonstrates the necessary steps for joint-use funding:

- The district submits an application for funding package
- The OPSC reviews the package
- The SAB approves and apportions the project in July
- The district submits DSA approved plans within one year from the date of apportionment (Type II Stand-Alone Project)
- The district requests a fund release and makes expenditures
- The district submits reports on expenditures
- The OPSC audits

[3] Only if plans and specifications were accepted by DSA prior to January 1, 2004.

The district must apply for joint-use funding on the *Application for Joint-Use Funding* (Form SAB 50-07). The Form SAB 50-07 not only provides the OPSC with the specific joint-use information such as type of joint-use project and square footage eligibility, but it also serves as a certification by the district that they meet specific criteria of the law and regulations.

The funding package will be reviewed by the OPSC for completeness and placed on a statewide workload list. District representatives can view the workload list on the OPSC Web site at www.opsc.dgs.ca.gov. If during the initial review, it is determined that information is missing, the district will be notified and given a timeframe to respond to the OPSC's request. In the event the OPSC does not receive the requested information within the given timeframe, the application will be returned to the district. The district may resubmit the application at anytime within the filing period, when they have all the components of a complete application.

Applications will be approved until there are no funds available. In this instance, all applications that do not receive funding will be returned to the district, and the district may resubmit the application in subsequent filing periods.

Preparing An Application

The following chart lists the supporting documents for each type of joint-use project that must be submitted with the Form SAB 50-07:

Joint-Use Funding Required Documents

	TYPE OF FUNDING		
DOCUMENT	TYPE I	TYPE II Part of SFP Modernization Project Reconfigure Existing School Buildings	TYPE II Stand-Alone Project Reconfigure/Construct New School Buildings
Joint-Use Agreement	✖	✖	✖
DSA Approved Plans	✖	✖	
Preliminary Plans			✖
CDE preliminary plan approval			✖
CDE final plan approval	✖	✖	
Cost estimate for site development	✖	✖	✖
Cost estimate for facility being built*	✖		

* If the project is for a Type I, Extra Cost

Joint-Use Grant Amounts

With the exception of a Type I project for Extra Cost, the joint-use grant will consist of a base grant for toilet and non-toilet facilities, which can be increased by certain supplemental grants. As of the date of this guidebook, the base grant is $252 per square for toilet area and $139 per square foot for non-toilet area. The grant amounts will be adjusted each year using the Class B index. Each project has a maximum state contribution of $1 million for an elementary school, $1.5 million for a middle school, and $2 million for a high school.

Supplemental Grants

The district can increase the joint-use grant with certain supplemental grants. The following is a brief explanation of the supplemental grants under the Joint-Use Program:

Geographic Location. A supplemental grant is available to projects located in areas of California that are remote, difficult to access, or lack a pool of contractors. The augmentation to the joint-use grant due to their geographic location can be found in Regulation Section 1859.83 (a).

Project Assistance. For a Type II stand-alone joint-use project, the SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The additional grant of $5,168 (as of the date of this guidebook) may be used for costs associated with the preparation and submission of the funding application. The grant will be adjusted each year using the Class B index.

Site Development. A supplemental grant is provided for the purpose of developing the site where the project is located. If the joint-use project is linked to a new construction project and site development costs are not covered under the new construction application because the site development is specific to the joint-use project, the district may apply for the site development under the joint-use project. If the joint-use project is a stand-alone project, the district may apply for applicable site development costs that pertain to the joint-use facility. Fifty percent of the following site development costs may be available for joint-use projects:

- Service site development improvements are performed within school property lines and may include site clearance, rough grading, soil compaction, drainage, and eligible erosion control. This portion of the site preparation is accomplished prior to the general site development and construction of buildings.
- Utility service development includes improvements of water, sewer, gas electric, and telephone from the closest existing utility connection to the project site meter or major building lateral location.

Off-site development is not an allowable expenditure under the Joint-Use Program.

Small Size Projects. A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds for core facilities and to make up for the lack of economies of scale when districts build small projects. The joint-use grant can be increased by 12 percent if the qualifying new construction or modernization project is linked to houses less than 101 pupils, or four percent if the qualifying new construction or modernization project is linked to will house over 100, but no more than 200 pupils. If the project is a Type II stand-alone joint-use project, the district is entitled to an eight percent increase to the grant.

Type II Joint-Use Grant. A Type II joint-use project cannot have an existing facility or the existing facility must be inadequate. A facility is considered inadequate when the square footage of the existing facility is less than 60 percent of the square footage entitlement shown in the Chart of Square Footages in Regulation Section 1859.124.1. A Type II joint-use project must have square footage eligibility. If the existing facility meets the test of being inadequate, or there is not an existing facility, then the square footage eligibility for a Type II joint-use project is the amount determined using the Chart of Square Footages.

Once the square footage eligibility for a Type II is established, the grant can be determined. The base grant is calculated by adding the following:

» $252 for Toilet Square footage in the facility
» $139 for Non-toilet Square footage in the facility
» Fifty percent of applicable supplemental grants

If the district is building area beyond their square footage eligibility, the OPSC will prorate the grant by determining the percentage of the whole facility that represents the joint-use project, and the grant will be determined using that percentage.

Type I Joint-Use Grant (Extra Cost). There is no square footage eligibility for a Type I that contains Extra Cost of the facility. The grant for a Type I Extra Cost can be determined by taking 50 percent of the construction cost of the whole joint-use facility and any applicable service site development costs, and subtracting the base grant amounts of $252 for toilet area in the project and $139 for non-toilet area in the project. The difference is the extra cost.

Type I Joint-Use Grant (Increased Size). A Type I joint-use project that increases size must have square footage eligibility. The first step in determining the grant is to determine the square footage eligibility. The square footage eligibility for a Type I joint-use project that increases the size of the project is calculated by first determining what size facility the district is entitled to based upon the CBEDS and the Chart of Square Footages, located in Regulation Section 1859.124.1. Then simply subtract this amount from the actual square footage being built, and the difference is the square footage eligibility.

Once the square footage eligibility for a Type I is established, the grant can be determined. The first step in determining the grant is to take the square footage eligibility and divide it by the total square footage of the facility being built. This will determine the percentage of the whole joint-use facility that the increased size represents. The base grant then is calculated by multiplying this amount by:

» $252 for Toilet Square footage in the facility
» $139 for Non-Toilet Square footage in the facility

In addition to the above, the project may be eligible for 50 percent of applicable supplemental grants.

Type I Joint-Use Grant (Increased Size and Extra Cost). In some instances, a Type I project may be for both increased size and extra cost. The grant for a Type I project that increases the size and contains extra cost shall be calculated in the following manner:

» Start with the architect's cost estimate to construct the facility.
» Subtract the cost to build the standard size facility that the district would be entitled to based upon the Chart of Square Footages. Since this project is built beyond the standard size facility, first divide the square footage determined from the Chart of Square Footage, by the total joint-use facility. This amount will determine the percentage of the whole facility that represents the standard size facility the district would otherwise be eligible for. Once this amount is determined, multiply this amount by the toilet facility area and by $252 and by the non-toilet facility area and by $139. This amount then becomes the amount to build the standard size facility.
» The difference is the grant amount for increased size and extra cost.
» Add any applicable service site costs.

Urban Locations, Impacted Sites, Security Requirements. Districts with projects in urban locations, on impacted sites, or in areas with security issues, may request a supplemental grant. Contact your project manager for qualifying information.

Joint-Use Partner Project Contribution

The State and local contribution to a joint-use project remains 50/50. However, the Joint-Use Partner contribution has been reduced to a minimum of 25 percent of the eligible joint-use project costs with the remaining local contribution coming from any other district source that would not otherwise be available to the SAB. The district need not have the entire 25 percent joint-use partner contribution on deposit at the time that the project approval is made. However, when the project fund release is requested, the district must certify that the joint-use partner's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. The district representative should be aware that regardless of when the share is contributed to the project, at closeout the district must be able to show that 25 percent of the expenditures on the project were from funds provided by the joint-use partner, unless the district has passed a local bond which specifies that the monies are to be used specifically for the joint-use project, then the district can opt to pay up to the full 50 percent local share of eligible costs. The State share will always be a maximum of 50 percent of the eligible project costs. If the district is unable to demonstrate the expenditure requirement, the apportionment will be reduced. Financial Hardship assistance towards the matching share for Financial Hardship districts will not be provided by the State.

If there are project costs beyond the eligible project costs, those costs can be paid by the district, joint-use partner, or any other local source.

Fund Release

After the funding application is approved and apportioned by the SAB, the next step in the process is the fund release to the County School Facilities Fund for use by the district.

The joint-use grant is processed for release when the district submits a *Fund Release Authorization* (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the joint-use grant apportionment by the SAB, or the grant will be rescinded without further SAB action. The only exception to this is if the joint-use project is a Type II (stand-alone project). If it is a Type II (stand-alone) joint-use project, the district has one year from the apportionment date to submit final DSA approved plans. Once the DSA approved plans are received by the OPSC, the district will have 18 months from that date to submit the Form SAB 50-05, or the grant will be rescinded without further SAB action.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

References

» Education Code, Section 17077.42
» SFP Regulations, Section 1859.124.1, "Square Footage Facility Chart."
» SFP Regulations, Section 1859.83 (a), "Excessive Cost Hardship Grant, Excessive Cost due to Geographic Location."

Section 9

Modernization Funding

Introduction

The School Facility Program (SFP) provides funding assistance to school districts for the modernization of school facilities. The assistance is in the form of grants approved by the State Allocation Board (SAB), and requires a 40 percent local contribution. A district is eligible for grants when students are housed in permanent buildings 25 years old or older and relocatable classrooms 20 years old or older and the buildings have not been previously modernized with State funds. The grant amount is increased and funding for specific utility upgrades is allowed if permanent buildings to be modernized are 50 years old or over. See Section 4, "Application for Eligibility."

The modernization grant (pupil grant) amount is set in law and is based on the number of students housed in the over-age facilities. In addition to the basic grant amount, a district may be eligible for supplemental grants depending on the type and location of the project. In some cases, districts unable to contribute some or all of the local match may be eligible for financial hardship. See Section 10, "Financial Hardship" for more information on this subject. Once the grants are determined for a project, a request is sent to the SAB for a modernization adjusted grant apportionment.

The modernization grant can be used to fund a large variety of work at an eligible school site. Air conditioning, insulation, roof replacement, as well as the purchase of new furniture and equipment are just a few of the eligible expenditures of modernization grants. A district may even use the grants to demolish and replace existing facilities of like kind. However, modernization funding may not be spent for construction of a new facility, except in very limited cases generally related to universal design compliance issues, or for site development.

This section explains the funding application process, typical requirements, and how to determine the modernization adjusted grant amount. It is important to understand that the discussion in this section focuses on the most common situations. There are many variations that may apply to specific projects that can not be covered in this brief overview. As always, the district representative should meet with the Office of Public School Construction (OPSC) project manager and discuss the district plan in detail.

Available Modernization Funding

There are two types of funding applications which may be made under the modernization program:

Modernization Adjusted Grant. A modernization adjusted grant is intended to provide the State's full share for all necessary project costs. In a typical project, a modernization adjusted grant includes the modernization grant (pupil grant) and any applicable supplemental grants as described in this section under "Supplemental Grants".

Separate Design. A separate design apportionment is available for districts that qualify for financial hardship. This apportionment represents 25 percent of the modernization grant[1]. Separate design funding is intended to allow a district to hire an architect to prepare the project plans for Division of the State Architect (DSA) approval. When the plans are complete and approved, and the district is ready to request the remaining modernization adjusted grant, it will be reduced by the design apportionment previously made.

Funding Process

After applying for and receiving approval of modernization eligibility, the process of applying for funding is as follows:

- the district submits a funding application package;
- the OPSC reviews the package;
- the SAB approves the apportionment;
- the district requests a fund release and makes expenditures;
- the district submits reports on expenditures to the OPSC;
- the OPSC audits.

The application for modernization funding is made on a single form, the *Application for Funding* (Form SAB 50-04). The form serves as a vehicle to collect the information necessary to calculate the amount of grants applicable to the project, and also is a certification from the district regarding compliance with requirements of law and the SFP Regulations. The district is ready to submit the application for funding after receiving approval by the California Department of Education (CDE) and the DSA of the plans for the proposed modernization project. In most cases, the district has determined its eligibility for modernization grants on the *Eligibility Determination* (Form SAB 50-03) before applying for funding. However, if the district has not established eligibility for the project previously, it may submit the eligibility application with the funding application (see Section 4, "Application for Eligibility").

The funding application is reviewed by the OPSC for completeness and placed on a workload list by date order received. District representatives can view the status of projects from the workload list that can be found on the OPSC Web site at www.opsc.dgs.ca.gov. The funding applications are then processed in date order for presentation to the SAB for consideration of apportionment. Note that at this time, the OPSC will reduce the funding request by the amount of previous apportionments to the project made under the SFP or Lease-Purchase Program (LPP).

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

When the SAB has no funds to apportion, the OPSC will continue to accept and process applications based on the date the application is received. The SAB will approve the application for placement on an unfunded list. An application for funding that is placed on an unfunded list is eligible for reimbursement pending the possible availability of future funding.

---

[1] SFP Regulations, Section 1859.81.1, "Separate Apportionment for Site Acquisition and Design Cost."

Preparing An Application

A complete application package is an essential element of the process of receiving funding for the district's project. The information provided is the basis for determining the grant amounts that the district will receive. The following discussion outlines the major elements of a complete application. This information is not necessary for a separate design funding request, unless noted.

All applications require a complete Form SAB 50-04 and must be based on a previous eligibility approved or must have the eligibility approved as part of the package (see Section 3, "Project Development Activities"). Eligibility for 50 year old buildings is not separate from the other eligibility at the site. If the district is requesting increased funding for pupils housed in 50-year old buildings, site diagrams with the ages and square footages of the buildings in the project must be provided with the application package. Also, please note that districts requiring financial hardship assistance must receive that status before filing a funding application (see Section 10, "Financial Hardship"). To complete the Form SAB 50-04 and to make the required certifications, the district representative will need at least the following supporting information.

Final DSA Approved Plans and Specifications

Education Code Section 17072.30 requires DSA approval of all final plans and specifications for new construction, modernization, or alteration of any school building for which the district is seeking State funding. If a district enters into a construction contract prior to receiving DSA approval of the plans and specifications, the project may not be eligible for State Funding. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval. The DSA approval must be current and valid at the time of submittal of the application for funding to the OPSC. Plans should include all work eligible for funding through the SFP. If plans are submitted in AutoCAD format, a copy of the DSA approval letter is required.

- As of October 2005, all funding applications must be accompanied by the DSA Final Plan Approval Letter.
- Submit all plans necessary to substantiate modernization work. In addition, submit plans for work associated with excessive cost hardship requests listed on the Application for Funding (Form SAB 50-04) for rehabilitation/mitigation, accessibility, fire code, and elevators.
- It is acceptable to submit the specifications on a diskette that is IBM compatible.

Assessibility/Fire Code Requirements Checklist

This completed checklist must be submitted to the DSA when submitting projects that contain access compliance and/or fire code work. Once the checklist has been signed by the DSA, as part of the plan approval process, districts must submit it to the OPSC as part of its complete application package.

Cost Estimate

A complete construction cost estimate signed by the architect or design professional is required for the modernization project. The construction cost as submitted to the DSA must equal at least 60 percent of the total project cost (district and State share).

CDE Plan Approval Letter

The CDE must approve plans for modernization projects before they can be considered for funding under the SFP. The district should contact the School Facilities Planning Division (SFPD) of the CDE as early as possible in the planning process.

District Certifications

As previously mentioned, the Form SAB 50-04 is also an official certification to a number of SFP requirements. The form and the instructions to the form provide specific detail about the certifications; however, some of the issues to which the district representative will have to certify are as follows:

- The district has established a "Restricted Maintenance Account" (see Section 13, "Additional SFP Requirements and Features" for more information).
- The facilities to be modernized were not previously modernized under the LPP.
- Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process (see Section 3, "Project Development Activities" for more information).
- The property to be modernized using SFP funds is either owned by the district or county superintendent or it is leased from another governmental entity. If the property is leased, the lease is for at least 40 years from a non-federal governmental agency or 25 years from a federal governmental agency. The cost of the lease is not an eligible cost under the SFP.
- If this request is for a large new construction or a large modernization project, the district has consulted with the career technical advisory committee established pursuant to Education Code, Section 8070, and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code, Sections 51224, 51225.3(b) and 52336.1.
- All large modernization funding applications for comprehensive high schools must be accompanied by evidence of compliance with Education Code, Section 17070.95. Documentation may include any of the following:
  - *Minutes from a public meeting by the school district's governing board documenting the discussion with and the recommendations of the local CTEAC regarding the CTE facility needs assessment.*
  - *Minutes from the meeting with the local CTEAC regarding the CTE facility needs assessment and recommendations.*
  - *Letter from the local CTEAC to the school district that identifies the subject of the discussion, the CTE facility needs assessment, and recommendations.*
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to SFP Regulations, Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district.
- The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code, Section 1771.7, if the project is funded from Proposition 47 or 55 and the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003.
- Beginning with the 2005/2006 fiscal year, the district has complied with Education Code, Section 17070.75(e), by establishing a facilities inspection system to ensure that each of its schools is maintained in good repair (see Section 13, "Additional SFP Requirements and Features" for more information).
- The district has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant federal, state, and local standards for the management of any identified lead.

Finally, to reduce the need to submit extensive supporting documentation, the OPSC will ask that the architect of record or other design professional certify to the following:

- The date that the DSA approved the plans and specifications.
- The number of classrooms demolished and not replaced and the number of classrooms constructed. (This is necessary to verify that no new construction, except the replacement of demolished facilities, is done with modernization funds.)
- That the cost estimate for the work in the plans and specifications as submitted to the DSA is at least 60 percent of the total grant provided by the State's and district's matching share.

Modernization Grant Amounts

The modernization grant is based on the number of pupils assigned to the project. This number may simply be the number of students enrolled at the site where the modernization will occur. This is usually true when all of the buildings at the site are 25 years or older for permanent buildings and 20 years or older for relocatable structures. In cases where only some of the buildings at the site are over age, and therefore eligible for modernization, the number of pupils assigned to the modernization project will probably be less than the total pupils on the site. The Form SAB 50-04 will assist the district in determining the proper number of pupils to be included in the application. When this number is determined, it is then possible to calculate the modernization grant amount as described in the next section. The following are the types of grants:

» Modernization Grant
  – *Modernization Grant for 50-Year-Old Buildings*
» Supplemental Grants

Modernization Grant

The pupil grant amount is intended to provide the State's share for all essential project costs, which include but are not limited to funding for design, the modernization of the building, education technology, unconventional energy, tests, inspections, and furniture and equipment. To calculate the district's modernization share, multiply the modernization grant by 0.6667.

Modernization Grant Calculation

The modernization grant for each pupil housed in buildings to be modernized is established by law.[2] The grant amount is adjusted every year in January, based on changes to the Class B construction cost index, by action of the SAB. As of January 2007, the modernization grants, which represent the State's 60 percent share of the project, are as follows:

Modernization Grant Amount

CLASSIFICATION	MODERNIZATION GRANT AMOUNT	COMMENTS
Elementary Pupil	$ 3,262	
Middle School Pupil	$ 3,450	Include grade six pupils if part of a 6–8 grade school.
High School Pupil	$ 4,516	
Special Day Class – Non-Severe	$ 6,953	
Special Day Class – Severe	$10,391	
State Special School	$17,325	

[2] Education Code, Section 17074.10.

Modernization Grant for 50-Year-Old Buildings

CLASSIFICATION	BASIC GRANT AMOUNT
Elementary	$ 4,530
Middle School	$ 4,792
High School	$ 6,274

CLASSIFICATION	BASIC GRANT AMOUNT
Special Day Class—Non-Severe	$ 9,656
Special Day Class—Severe	$14,440
State Special School	$24,066

A modernization grant request must be for at least 101 pupil grants, or the remaining modernization eligibility at that school site if less than 101 grants are available.

Supplemental Grants

The supplements are intended to recognize special costs associated with projects of a certain type or located in certain areas. The district also uses the Form SAB 50-04 to supply information related to the supplemental grants. There are many possible supplemental grants as follows:

» Elevators
» Energy Efficiency
» Fire Code Requirements
» Geographic Location
» Handicap Access and Fire Code Compliance
» Labor Compliance Program
» Project Assistance
» Rehabilitation
» Site Development for 50-Year-Old Buildings
» Small School High Program
» Small Size Projects
» Urban Locations, Impacted Sites, Security Requirements

The following is a brief explanation of the supplemental grants:

Elevators

If the DSA requires 2-stop elevators in the modernization project, the modernization grant will be increased by $87,121 for each two-stop elevator. The district must attach the DSA letter that requires the elevators be included in the project for handicap access compliance. The modernization grant will be increased by $15,680 for each additional stop required.[3] The grant amount will be adjusted annually using the Class B index.

Energy Efficiency

A supplemental grant is available to districts with projects that have increased costs associated with plan design and other project components for school facility energy efficiency. The facilities in the proposed project must exceed the nonresidential building energy efficiency standards as specified in Title 24, Part 6

[3] SFP Regulations, Section 1859.83(f), (1) and (3), "Excessive Cost Hardship Grant."

of the California Code of Regulations by at least 10 percent. Currently all energy efficiency funds have been exhausted. At the September 2006 SAB the remaining modernization energy funds were re-designated to fund the new construction energy projects.

Fire Code Requirements

The modernization grant will be increased for each pupil in a project that includes an automatic fire detection and alarm system. The current increase is as follows:

Modernization Grant increase—Automatic Fire Detection and Alarm System

CLASSIFICATION	GRANT INCREASE
Elementary	$104
Middle School	$104
High School	$104

CLASSIFICATION	GRANT INCREASE
Special Day Class—Non-Severe	$195
Special Day Class—Severe	$291

The amounts shown above are the 60 percent State share and are adjusted annually in the same manner as the Modernization Grant.

Geographic Location

A supplemental grant is available to districts with projects that are located in areas of California that are remote, difficult to access, or lack a pool of contractors. A district may qualify and request an augmentation to the modernization grant because of their geographic location.

Handicap Access and Fire Code Compliance

The excessive cost hardship grant for access compliance[4] is based on actual hard costs as reported by the district on the accessibility/fire code requirements checklist. These costs must be the minimum work necessary to receive approval from the Access Compliance Unit of the DSA and must be verified by the DSA and the OPSC. The grant is calculated by taking the difference of the verified actual hard costs and subtracting seven percent of the sum of the State and district share of the project's modernization base grant (when the Lease Purchase Program converted to the SFP, it was the intent that seven percent of the modernization base grant covered access compliance work). However, there is a cap that may not be exceeded.

If the construction costs of a modernization project exceed 50 percent of its replacement cost, the building must be brought into compliance with the current building code as part of the Title 24 requirements. Therefore, the maximum a district can receive for access compliance is the difference between the new construction base grant (which represents approximately 50 percent of the replacement cost) and the sum of the State and district share of the modernization project's base grant.

The chart below illustrates how the excessive cost hardship grant cap is calculated based on one pupil grant, and how the seven percent is applied:

[4] SFP Regulations, Section 1859.83(f), "Excessive Cost Hardship Grant."

Calculation of Maximum Grant (Cap)—Based on One Elementary Pupil

STATE AND DISTRICT SHARE OF NEW CONSTRUCTION BASE GRANT AT 50 PERCENT	*subtract*	STATE AND DISTRICT SHARE OF MODERNIZATION BASE GRANT	*equals*	MAXIMUM GRANT ALLOWABLE FOR ACCESSIBILITY REQUIREMENTS
$8,081		$5,437		$2,644

This chart provides examples of the calculation of the excessive cost hardship grant:

Examples of Calculation of the Excessive Cost Hardship Grant

IF THE MINIMUM ACCESSIBILITY WORK VERIFIED BY DSA IS:		7 PERCENT OF STATE AND DISTRICT SHARE OF MODERNIZATION BASE GRANT		DIFFERENCE	EXCESSIVE COST @ 100 PERCENT
$2,000	*subtract*	$ 381	*equals*	$1,619	$1,619
$3,500	*subtract*	$ 381	*equals*	$3,119	$2,644 (cap)
$ 350	*subtract*	$ 381	*equals*	–$ 31	$ 0

Modernization projects that consist of replacement of buildings in like-kind instead of modernizing them will be eligible for an excessive cost hardship grant equal to three percent of the modernization base grant only.

Labor Compliance Program (LCP)

A labor compliance program, as specified by Labor Code Section 1771.5, must be initiated and enforced for each project funded wholly or in part from Propositions 47 or 55 funds if the Notice to Proceed was issued on or after April 1, 2003. Additional funding is provided for these projects. The LCP grant is calculated on a sliding scale as follows:

Labor Compliance Program Grant

IF TOTAL PROJECT COST IS...		THEN THE TOTAL LCP COST IS...
AT LEAST	UP TO	
$ 0	$ 1 million	$ 16,000
$ 1 million	$ 2 million	$ 16,000 plus 0.016 multiplied by the amount over $1 million
$ 2 million	$ 3 million	$ 32,000 plus 0.0025 multiplied by the amount over $2 million
$ 3 million	$ 4 million	$ 34,500 plus 0.0015 multiplied by the amount over $3 million
$ 4 million	$ 6 million	$ 36,000 plus 0.0032 multiplied by the amount over $4 million
$ 6 million	$ 8 million	$ 42,400 plus 0.0031 multiplied by the amount over $6 million
$ 8 million	$13 million	$ 48,600 plus 0.0046 multiplied by the amount over $8 million
$13 million	$18 million	$ 71,600 plus 0.0044 multiplied by the amount over $13 million
$18 million	$48 million	$ 93,600 plus 0.0042 multiplied by the amount over $18 million
$48 million	N/A	$219,600 plus 0.004 multiplied by the amount over $48 million

The State's share will be 60 percent of the above result.

Project Assistance

The SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The current additional grant of $2,755 may be used for costs associated with the preparation and submission of the SFP eligibility and funding applications, including costs related to support documentation such as site diagrams. The grant amount will be adjusted each year using the Class B index. The district can find the current amount on the OPSC Web site.

Rehabilitation

A district may apply for the rehabilitation of facilities that the SAB has determined are an imminent health and safety risk to the pupils, if the cost/benefit analysis to mitigate the problem and remain in the building is less than 50 percent of the current replacement cost. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project.

Site Development for 50-Year-Old Buildings

A supplement grant is provided for the purpose of upgrading existing utilities as necessary for the modernization of 50 year or older permanent buildings. Sixty percent of the estimated utility costs, up to a maximum of twenty percent of the Modernization Grants (pupil grant), are available. Allowable utility cost fall under five categories:[5]

- Water
- Sewage
- Gas
- Electric
- Communication systems

It is important to understand that site development costs have restrictions on their use. The district representative should consult the SFP Regulations and the OPSC project manager if he or she is unsure if a particular item is an allowable cost before including the work in the project.

If a district is requesting a supplemental grant associated with site development on the Form SAB 50-04, verification must be submitted to support the request. To assist in gathering the supporting detail, the OPSC has developed a Site Development Worksheet for Additional Grants that is located on the OPSC Web site. The district may use this worksheet or similar method to submit this information to the OPSC.

Small High School Program

The Small High School Program is a pilot program that will sunset on January 1, 2008. A supplemental grant is available for the reconfiguration of large high schools into small high schools. The reconfiguration must result in at least two or more small high schools. Each small high school created may receive a supplemental grant up to $500,000 for costs related to the reconfiguration.

Small Size Projects

A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds to modernize core facilities and to make up for the lack of economies of scale for small projects. The modernization grant can be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house over 100, but no more than 200 pupils.

5 SFP Regulations, Section 1859.78.7, "Modernization Additional Grant for Site Development Necessary for 50 Years or Older Permanent Buildings."

Urban Locations, Security Requirements and Impacted Sites

Districts with projects in urban locations on impacted sites may request a supplemental grant if:

» The useable site acreage for the project is 60 percent or less of the site size recommended by the CDE based on current CBEDS Report at the site at the time of the CDE final plan approval for the modernization project.

Urban locations on impacted sites are generally in areas of high population density. Districts with projects on these impacted sites are also faced with extra security requirements. The supplemental grant provides funds for security fences, watchpersons, increased premiums for insurance for contractors, and storage or daily delivery of construction materials to prevent theft and vandalism. If a district requests grants due to these circumstances, the OPSC will verify the district's eligibility pursuant to the CDE Final Plan Approval letter.

If the above criterion is met, the urban supplemental grant is calculated on a sliding scale as follows:

Modernization Urban Grant Adjustment

IF...	THEN...
the useable acres are 60 percent of the CDE recommended site size, as described above...	the urban grant adjustment is 15 percent of the Modernization Grant and of the funding for small size projects† and new school projects*, and a 0.333 percent increase to the urban grant adjustment for each percentage decrease in the CDE recommended site size below 60 percent.

* SFP Regulations, Section 1859.83(b), "Excessive Cost for Projects that House No More than 200 Pupils (Small Size Project)"

District Project Contribution

Every modernization application is a joint funding effort between the local school district and the State though the SFP. The State grant is discussed in the section entitled "Modernization Grant", earlier in this section. The total State grant represents 60 percent of the total project cost, with the district contributing the remaining 40 percent of the necessary funding.

The district contribution may come from virtually any source. The sole exception is that when savings from another SFP project are used as match, it must be from a modernization project only. This restriction exists due to legal requirements pertaining to the bond funds, which the State uses as a program-funding source.

The district need not have the entire 40 percent local contribution on deposit at the time that the project approval is made. However, at the time of the project fund release, the district must certify that the district's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. Thus the district has considerable flexibility in how the local share is arranged and contributed. The district representative should be aware, however, that regardless of when the share is contributed to the project, the district must be able to show at closeout that 40 percent of the expenditures on the project were from local sources. If the district is unable to demonstrate the 40 percent expenditure requirement has been met, the apportionment will be reduced.

Unable to Meet the Contribution

Districts that are unable to contribute all of the 40 percent local share of a project, can pursue financial assistance through the financial hardship provisions of the SFP. Districts must submit financial data to the OPSC for "pre-approval" of financial hardship status (see Section 10, "Financial Hardship") before submitting a funding application. In addition, this "pre-approval" enables districts to request a separate apportionment for design costs, if necessary.

SAB Approval Process

The SAB approval can either be an apportionment or "unfunded" approval, depending on the availability of funds for modernization. If there are no funds available, the project will be placed on a list of unfunded projects to await possible future funding.

Fund Release

After the funding application is apportioned by the SAB, the next step in the process is the actual fund release to the County School Facilities Fund for use by the district.

The SFP grant is processed for release when the district submits a *Fund Release Authorization* (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the SFP grant apportionment by the SAB, or the entire new construction or modernization adjusted grant will be rescinded without further SAB action. If this should happen, the pupils housed in the project will be added back to the district's eligibility and the district may re-file the application at any future time.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

This page is intentionally blank.

Section 10
Financial Hardship

Introduction

Financial hardship assistance is available for those districts that cannot provide all or part of their funding share of a School Facility Program (SFP) project. In order to receive financial hardship assistance, a district must have made all reasonable efforts to raise local funding and must also demonstrate that it is unable to contribute all or a portion of the matching share requirement.

If the district meets the financial hardship criteria, it is eligible for financial assistance for new construction or modernization projects. It may also be eligible for a separate apportionment for the following:

» For new construction or modernization projects, an early apportionment for design costs.
» For new construction projects, an early apportionment for site acquisition.

A district seeking financial assistance must have an approved financial hardship status prior to submitting an *Application for Funding* (Form SAB 50-04) for either a new construction or modernization grant request. In order to obtain this approval the district must provide verification that a reasonable effort was made to meet the district's matching share requirement, and must have confirmation from the Office of Public School Construction (OPSC) that the district is unable to contribute the entire matching share requirement. When this is accomplished, the OPSC will recommend that the district be approved as a financial hardship and will send a 'pre-approval' letter to the district.

Qualifying for Financial Hardship Assistance

To apply for financial hardship, send a letter to the OPSC Financial Hardship Audit Unit stating why the district is requesting financial hardship. Along with the letter, the district must submit the following documents:

Documentation for Financial Hardship Application

LEGAL REQUIREMENT	FINANCIAL DOCUMENTATION REQUIRED
Levy maximum developer fee allowed	School Board Resolution regarding developer fees
Demonstrate local effort to raise revenues	Evidence of at least one of the following: • Debt level at 60 percent of bonding capacity • Total district bonding capacity less than $5 million • The district had a successful registered voter bond election for at least the maximum allowed under Proposition 39 within the previous 2 years. • Other evidence which demonstrates that all reasonable local efforts have been made as approved by the State Allocation Board (SAB)

continued on following page...

Documentation for Financial Hardship Application...

LEGAL REQUIREMENT	FINANCIAL DOCUMENTATION REQUIRED
Financial inability to contribute the match	Evidence that facility funds are not available: • Financial Hardship Project Worksheet • Financial Hardship Worksheet • Latest independent audit reports • Encumbrances • Expenditure reports • Listing of the district's unused sites • Forms SAB 50-01 and SAB 50-02 for "interim housing" deduction calculation for new construction projects only • Written estimation of interim housing needs

If the financial hardship package is incomplete, a letter will be sent to the district requesting the necessary documentation to make the request complete. If the requested information is not submitted in a timely manner, the request will be returned unprocessed. The district may re-file the request whenever the missing documents become available.

County offices of education do not need to provide documentation regarding developer fees or evidence of reasonable effort to raise local funds.

Financial Hardship Assistance Request

In order to qualify for financial hardship assistance, the school district must demonstrate that it has made all reasonable efforts at the local level. The district must also provide evidence that it is unable to pay all or a portion of the district's share of the project. The process of providing the required evidence is discussed in this section.

Evidence of Reasonable Effort to Fund Matching Share

As previously mentioned, the law requires that a district seeking financial hardship assistance must demonstrate that all reasonable efforts have been made to raise local revenues for the SFP matching requirement. The SAB has adopted regulations that set criteria to determine that this requirement is met. The district must be levying developer fees at the maximum rate justified by law and must verify it meets at least one of the following:

Bonding Capacity and Indebtedness Threshold. The current outstanding indebtedness of the district, at time of financial hardship request, is at least 60 percent of the district's total bonding capacity. A district with a total bonding capacity of less than $5 million meets this requirement regardless of the level of indebtedness. Outstanding indebtedness includes General Obligation Bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and Certificates of Participation (COPs) that was issued for capital outlay school facility purposes, on which the district is paying a debt service.

The required documentation needed is a certification from the county auditor controller stating the district's assessed valuation, outstanding indebtedness, and remaining bonding capacity.

Voter Bond Election. The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

The required documentation needed:

- Copy of ballot issue.
- Original bond election estimates that support the amount of bond for which the district sought election.
- Date of election; amount of bond; purpose of bond; percent of "Yes" vote on bond.
- Copy from County Auditor-Controller certifying the district's current bonding capacity and outstanding indebtedness.

County Superintendent of Schools. A county superintendent of schools automatically meets the reasonable effort. The County Superintendent must then complete a financial review to determine the level of financial assistance needed.

Other Evidence of Reasonable Effort. If the district does not meet the reasonable effort requirements outlined above, it may present to the SAB other evidence of reasonable efforts to fund its matching share. This can be done using a *School District Appeal Request* (Form SAB 189). This form and instructions for completing the form are available on the OPSC Web site. In addition to the completed Form SAB 189, the district must also submit updated Financial Hardship Worksheets for each fund within the Capital Project Funds and the latest independent audit report. If the hardship justification is approved by the SAB, the district may then file its request for financial hardship using the approved SAB item as evidence of having met the reasonable effort test to fund its matching share for its projects. The district must then submit all of the requested financial documents necessary for a final financial hardship review, as described in the table "Documentation for Financial Hardship Application" on page 71.

Financial Review

The OPSC will conduct an analysis of the district's financial information to verify that the district is unable to provide all or a portion of the necessary matching funds for an eligible project. The analysis will include the applicant's financial records including those maintained by the California Department of Education (CDE) and the county office of education. The review will determine whether available non-operational funds and savings from other SFP projects are sufficient to fund all or a portion of the matching share requirements on a project. See SFP Regulations, Section 1859.81, for more information on the financial review.

Financial Hardship Project Worksheet. This is used by the OPSC to estimate the district's share of the project. The district must submit a separate Financial Hardship Project Worksheet for each project for which it is requesting financial assistance. The worksheet can be found on the OPSC Web site.

Financial Hardship Worksheet. This worksheet is used by the OPSC to determine the amount of the cash contribution to be provided by the district. These worksheets are based on the latest independent audit report and then brought current to application date with subsequent transactions that have occurred in the funds. Detail of the expenditures made for the subsequent events must accompany this worksheet. If this is not submitted, all of the expenditures shown will be disallowed and deemed as "funds available".

On the worksheet, the district will identify restricted funds such as class size reduction, as well as the purpose for any restrictions on funds, and will identify all bonds and COPs authorized and sold to date of financial hardship request. If the district has unsold bonds or COPs, possible restrictions on the use of these funds should be noted.

Latest Independent Audit Report. The district's latest independent audit report is used by the OPSC to verify the financial condition of the district. The district must submit the entire audit report.

Developer Fee Information

The district must be levying developer fees at the maximum rate justified under law or have an alternative revenue source equal to or greater than the developer fee otherwise justified.[1] As evidence, please include a copy of the resolution from the district's school board authorizing the levying of the fee. If the district is not levying the maximum fee allowed by law in accordance with current statute, include a copy of the district's recent Implementation Study and/or the Needs Analysis to support the amount being levied or justification for an alternative revenue source.

If the district entered into an agreement with a city, county, or other government entity regarding developer fees, please submit a copy of that agreement. In addition, please submit documents showing the amount of fees that could have been collected during the time frame of the agreement versus the amount that was actually collected and shown as revenue for the district.

If the district received any benefit, building, land, etc., in lieu of developer fees please submit documentation regarding the "in lieu" received and the value of the developer fees that were negated due to the "in lieu" agreement(s). If the district did not enter into agreements regarding developer fees, please submit a statement to that effect.

The current developer fees can be found on the OPSC Web site at www.opsc.dgs.ca.gov. Developer fee amounts are adjusted every even numbered year at the January SAB meeting based on an index specified in law. In order to maintain financial hardship eligibility, districts must implement the new developer fee within six months after an index change.

Encumbrances. The district must provide contracts and all other documentation supporting any encumbrances or obligations the district is claiming. All funds identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

Interim Housing Deduction from Available District Funding. From the funds available as a matching contribution, the district may retain $28,709 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. In addition, from the funds available as a matching contribution, the district may also retain $28,709 per approvable portable toilet unit in each reporting period for the cost to provide interim toilet facilities for the currently unhoused pupils of the district. This amount is adjusted annually. The current amount can be found on the OPSC Web site.

If the district is requesting an "interim housing" deduction from available funds, it needs to submit in writing an estimation of the district's interim housing needs for the year. The interim housing deduction and any related expenditures will be audited in the future.

Expenditure Reports. The district must submit expenditure reports, *Summary of Expenditures and Construction Progress* (Form SAB 184) and *Detailed Listing of Warrants Issued by the District* (Form SAB 184A), for each project for which the district is requesting financial hardship. If no funds have been spent on a project, the district must submit a statement to that effect. The OPSC will review any prior apportionment and the expenditures reported. All expenditures above and beyond a prior apportionment will be considered as a matching contribution. The SAB will not reimburse the district for expenditures made prior to the financial hardship approval.

Listing of the District's Unused Sites. The district must submit a listing of the district's unused sites and intended use. If the district has no unused sites, submit a statement to that effect.

---

[1] Education Code Section 17075.10.

Approval of Financial Hardship Assistance

Once the financial hardship review is complete, the OPSC will send a letter to the district stating the available funds and expenditures that will be considered available for match purposes. If the district disagrees with the OPSC's findings, the district may submit additional information for consideration. Once the district has been approved for financial hardship (has a pre-approval letter), the district may submit its Form SAB 50-04, for the projects and specific phases listed in the financial hardship approval letter.

When a district is approved for financial hardship, the approval is valid for six months. If, within the six months, the district wishes to submit additional applications or phases of a previously approved project, it must have a pre-approval letter for those additional specific projects or subsequent phases prior to filing the Form SAB 50-04. To obtain pre-approval within the six months, the district must submit a Financial Hardship Project Worksheet for the project along with expenditure reports. The district does not need to update other financial information unless the six month period is past.

If the district's request for financial hardship status is denied by the Board, the district may be eligible for rental payments of $2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation satisfactory to the Board that it is unable to afford the full rental amount.

Subsequent Financial Hardship Request

Once a district receives funding as a financial hardship, the district should be aware that for a period of three years, all capital facilities funding received by the district from any source will be considered available for the matching share on a future financial hardship request. The exceptions are:

- Approved interim housing expenditures;
- Funding to pay for multi-year encumbrances approved at the initial financial hardship approval;
- Funding that is transferred into a Special Reserve Fund and is used for the purpose of the Federal Renovation Program;
- School Facilities Needs Assessment Grant Program; or the
- Emergency Repair Program.

Renewal of Financial Hardship Assistance

If the district does not submit an *Application for Funding* (Form SAB 50-04) within six months of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status by submitting a new request for financial hardship status.

The district will need to update its financial information by providing all required documentation as listed in the table "Documentation for Financial Hardship Application" on page 71 .

Financial Hardship Review for Financial Hardship Projects on Unfunded List

If a district's project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

This page is intentionally blank.

Section 11

Facility Hardship Grant

Introduction

Under very limited circumstances, a need to replace or construct new facilities may exist for reasons other than enrollment growth. For instance, a classroom or support facility may no longer be safe to occupy due to a structural failure or other severe health threat. To address these unusual situations, the State Allocation Board (SAB) has developed a facility hardship grant. The purpose of the grant is to assist districts with funding where it has been determined that the district has a critical need for pupil housing because the condition of the facilities, or the lack of facilities, presents an imminent threat to the health and safety of the pupils.

By definition a facility hardship is an unusual, often unique situation. It is difficult to describe a "normal" process since each request must be reviewed and analyzed on a case-by-case basis. This section outlines the process, but by no means addresses all possible facility hardship situations. When a significant and serious threat exists to the health and safety of students or staff in any public school environment or if an existing facility has been destroyed by natural disaster, the district should contact the Office of Public School Construction (OPSC) project manager for guidance.

Eligibility for Facility Hardship Grants

To be eligible for a facility hardship grant the district must demonstrate that one of two conditions exists: facilities must be replaced due to an imminent health and safety threat, or existing facilities have been lost to fire, flood, earthquake or other disaster. If the district is to qualify for a facility hardship grant under one of these two conditions, the district wide enrollment must justify a continuing need for these facilities, pursuant to the School Facility Program (SFP) Regulation, Section 1859.82.

Replacement Due to Imminent Health or Safety Hazard

In this case, existing facilities must be replaced to ensure the health and safety of the pupils because of circumstances such as the following:

- The existing facilities have serious structural deficiencies, which must be repaired or corrected as specified by the Division of the State Architect (DSA); or
- An imminent hazard exists because the existing facilities are in close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission source; or
- There are existing traffic safety problems or the pupils live in a remote area and transportation to existing facilities is not possible or poses a serious threat to the health and safety of the pupils; or
- Environmental health hazards such as dangerous levels of mold contamination; or
- Other situations exist which pose a threat to the health and safety of the pupils.

A facility hardship approval to replace facilities is limited to the most severe instances of need. Clear demonstration is needed that the health and safety of the children is in jeopardy.

Documentation. Typical supporting documentation should be in the form of written statements/reports by a qualified industry expert or specialist appropriate for the specific area of concern. This documentation must then be reviewed and written concurrence provided by the appropriate State agency expert that has jurisdiction relating to the problem area. For example, air quality threats might involve a certified professional on staff at the State Department of Health; traffic problems might be supported by the California Highway Patrol, and so forth. If structural deficiencies are the basis of the health and safety threat, a licensed structural engineer's report is required that substantiates the structural deficiencies which were out of compliance with codes in place at the time of original construction. The structural report must be accompanied by a letter of concurrence by the DSA. In any case, the statement provided to the OPSC must indicate how the problem poses an immediate threat to the health and safety of the children. Refer to Appendix 2, "Potential State Agency Involvement" for possible contact information.

Cost/Benefit Analysis. If the district has substantiated a health and safety issue and wishes to replace existing facilities, a cost/benefit analysis must be prepared and submitted to the OPSC. The analysis should include only the minimum work necessary to mitigate the identified health or safety problems and compare these with the SFP standard for Current Replacement Cost. The cost/benefit analysis may include applicable site development costs.

If the request is for replacement facilities that are needed as a result of structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain the DSA's approval. The cost/benefit analysis must include a narrative of the structural deficiencies and a description of the repair approach required to perform the minimum work necessary to mitigate the health and safety threat to obtain DSA approval. The analysis must also include a detailed cost estimate for the minimum work necessary described in the narrative. "Soft costs" such as architect fees, testing and inspection may be included in the cost estimate as a separate line item but should not be included in the cost/benefit analysis. The analysis and detailed cost estimate must be signed by the authoring licensed design professional.

If the total cost to mitigate the health or safety problem and remain in the facility exceeds 50 percent of the current replacement cost of the facility, it can be considered for abandonment and replacement. However, if the cost to remain in the facility is less than 50 percent of the current replacement cost, the district may qualify for rehabilitation. A qualifying replacement project will receive 50 percent of the eligible cost. A rehabilitation project will receive 60 percent of eligible costs. For more information on rehabilitation, refer to Section 9, "Modernization Funding."

Facilities Lost or Destroyed as a Result of a Disaster

A district may apply for the replacement of school facilities that were lost or destroyed as a result of a disaster, such as fire, flood or earthquake, for the following facility types:

- Classroom or related facility
- Library/media center
- Multi-purpose room
- School administration
- Gymnasium
- Toilet

Qualifying facilities must be required to ensure the health and safety of the pupils and must no longer be useable for school purposes as recommended by the California Department of Education and approved by the State Allocation Board (SAB). The district is also required to demonstrate satisfactorily to the SAB that the facility was uninsurable or the cost of insurance was prohibitive.

Documentation. Supporting documentation for facility hardship requests for the replacement of lost or destroyed facilities would include the following:

- Photos and written verification from the appropriate expert that documents the loss or the extent of damage to the school facility.
- Copy of the district's insurance policy that documents the level and type of coverage provided.
- Written verification from the district's insurance carrier that documents the amount of funds that the district has and/or will recover as a result of the disaster.
- If the facility is damaged, as opposed to entirely destroyed, the district must submit a licensed structural engineer's report, as outlined in this section, illustrating the extent of the damage and that the facility poses an immediate threat to the health and safety of the students and staff. The district would also be required to submit a cost/benefit analysis, as outlined in this section, signed by the authoring licensed design professional. The OPSC requires the district submit the DSA's concurrence with the report.

Application and Approval Process

In addition to the documentation supporting the health and safety issue and the cost/benefit analysis, as applicable, all facility hardship requests must also include the following:

- An Application for Funding (Form SAB 50-04) completed as applicable to make the initial request for conceptual approval by the State Allocation Board for the specific facility hardship type.
- A School District Appeal Request (Form SAB 189) that summarizes the district's request for a facility hardship including how the condition presents an imminent threat to the health and safety of the students and staff.
- A plot diagram that indicates the overall site layout, the facilities designation of the buildings and square footage. The diagram should indicate the specific structures at the school site for which the facility hardship request is being submitted.

After the analysis of the report(s) and review of the cost by the OPSC, an item will be prepared for presentation to the SAB for consideration of conceptual approval. If the SAB approves the district's request for new or replacement facilities, the district is eligible for funding as a new construction project. The district can then proceed with hiring an architect in order to complete plans, obtain DSA approval, and apply for funding grants. A district that receives a conceptual approval has 18 months, or 24 months if a new replacement school site is required, to submit a complete funding application (including DSA plan approvals, cost estimates, etc.). Funding for a facility hardship is subject to the availability of funds.

Interim Housing

In the event of an emergency or for districts in need of short-term interim housing to meet their facility needs, districts may seek assistance from the OPSC. Our project managers will evaluate each request on a case-by-case basis and will work with districts to find them interim housing as the SAB has approved the phase out of the State Relocatable Classroom Program. If a district is in need of immediate facilities to replace those damaged by a natural disaster, the OPSC can administratively expedite the approval of new construction funding applications through the Natural Disaster Plan, which allows districts to purchase relocatable classrooms quicker to address their facility needs. Again, our project managers will assist districts with processing these type of applications to ensure facilities are received in a timely fashion.

References

» SFP Regulations, Section 1859.76, "Additional Grant for Site Development Costs."
» SFP Regulations, section 1859.82, "Facility Hardship Grant."
» SFP Regulations, Section 1859.83, "Excessive Cost Hardship Grant."

Section 12
Program Accountability

Introduction

The School Facility Program (SFP) has significantly increased program flexibility and responsibility at the local level, while reducing the State's oversight role. In general, the State's fiscal concerns are limited to verifying that the expenditures and certifications of program requirements made by the district for the project comply with the law, that the district followed applicable State requirements pertaining to construction and to verify that the project progresses in a timely manner as specified in statute. To assist with this oversight, a district is required to submit expenditure reports and evidence of progress during the construction of the project. On a project that requires less than a year to complete, only an expenditure report is required.

Progress Report

The SFP requires that an approved project be constructed within certain time frames. To ensure that this happens, evidence of progress is generally due after funds are released to the district for the project.[1] The specific evidence required and the timeframe for submitting such evidence depends on the type of funding received. The possible types of funding include Separate Design (Financial Hardship), Separate Site (Financial Hardship), Separate Site (Environmental Hardship), and/or Adjusted Grant. The following table defines the specific criteria for meeting the substantial progress requirement and indicates the filing time requirements based on the type of funding received.

[1] In cases where separate environmental hardship funds are involved, the due date is based on the apportionment date instead of the fund release date.

Substantial Progress Reports

FUNDING RECEIVED	EVIDENCE OF PROGRESS DUE DATE	EVIDENCE OF PROGRESS REQUIRED
Separate Design (Financial Hardship project only)	18 months from Fund Release	One of the following: • Submittal of a complete Adjusted Grant funding application package to the Office of Public School Construction (OPSC). • Submittal of a district certification that complete plans and specifications have been submitted to the Division of the State Architect (DSA). • Submittal of a complete Separate Site funding application package to the OPSC. Or: • Submittal of a narrative of evidence, satisfactory to the State Allocation Board (SAB), detailing why complete plans have not been submitted to the DSA.
Separate Site (Financial Hardship)	18 months from Fund Release*	Submittal of a progress report certifying that all of the following have been achieved: • Obtain the final site appraisal. • Complete all California Environmental Quality Act (CEQA) requirements. • Obtain final California Department of Education (CDE) site approval. • Obtain final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site. Or: • Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) which precluded progress from being achieved.
Separate Site (Environmental Hardship)	12 months from the apportionment date or anniversary of conversion from Separate Site Financial Hardship, and on each subsequent anniversary if necessary.	Submittal of one of the following: • A progress report satisfying the same criteria set forth for Separate Site (Financial Hardship) funding. • A request for an extension (which is supported by written letters of concurrence from the Department of Toxic Substance Control (DTSC) and the CDE). • Other reasonable evidence of effort the district has made.
Adjusted Grant	18 months from Fund Release†	Submittal of a progress report certifying one of the following: • 75 percent of site development work necessary prior to construction is complete. • 90 percent of construction activities have been contracted for. • 50 percent of construction activities are complete. Or: • Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) which precluded progress from being achieved.

* If toxic substance issues are delaying site progress, the district may convert the site apportionment to an Environmental Hardship apportionment. Environmental hardship projects may request annual extensions with appropriate substantiation.

† The progress-reporting requirement for Adjusted Grant funding can be suspended if one of the following occur before the reporting deadline:
- The district submits a Notice of Completion for the project. If more than one construction contractor is involved in the project, a Notice of Completion is required for each construction contract.
- The district submits an Expenditure Report (Form SAB 50-06), which shows that the project is substantially close to 100 percent completion.

Substantial Progress Audit

Upon receipt of the substantial progress report, the Office of Public School Construction (OPSC) will analyze the information and will notify the district within 60 days if it intends to recommend to the State Allocation Board (SAB) that the evidence submitted does not demonstrate substantial progress. If the OPSC does not respond to the district within 60 days of submittal, the OPSC concurs with the district that substantial progress has been made.

Expenditure Report

Throughout the construction period of a project, the district will file one or more expenditure reports. The first expenditure report is due one year after the first fund release or upon completion of the project, whichever occurs first. Additional expenditure reports are due annually from the date the first report is due until the project is complete. A project is considered complete when either of the following occur:

- The notice of completion for the project has been filed.
- Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

Preparing the Expenditure Report

A district submits a record of project expenditures by using the *Expenditure Report* (Form SAB 50-06). This form allows the district to report all expenditures from district and State funds in summary form. To support the Expenditure Report, the OPSC has developed an Expenditure Worksheet which is available on the OPSC Web site at www.opsc.dgs.ca.gov. The district is encouraged to use this worksheet to gather and record the expenditure detail and to accompany the Form SAB 50-06.

Expenditure Audit

Within two years of receipt of the final expenditure report from the district, the OPSC must initiate an audit of the expenditures. If the district is not notified by the OPSC within that time frame that an audit will be made, the expenditures submitted by the district and certifications made on the Forms SAB 50-04 and SAB 50-05 will be accepted. If the OPSC has notified the district that an audit will be made, the OPSC must complete the audit within six months, unless additional documentation requested from the district has not been received.

Eligible Expenditures

The following table lists those expenditures that are typically eligible costs under the SFP:

Eligible Expenditures

EXPENDITURE	NEW CONSTRUCTION	MODERNIZATION
Acquisition and installation of portable classrooms	✖	✖*
Acquisition and conversion of an existing government or privately-owned building, or privately-financed school building	✖	
Construction	✖	✖
Construction management	✖	✖
Demolition	✖	✖
Design	✖	✖
Engineering	✖	✖
Fire safety improvement		✖
Force account labor costs that comply with Public Contract Code	✖	✖
Furniture and Equipment (including telecommunication equipment to increase school security)	✖	✖
Identification, assessment, or abatement of hazardous asbestos		✖
Inspection	✖	✖
Labor Compliance Program oversight costs	✖	✖
Landscaping	✖	
Legal fees associated with the reviews of bid documents, securing a site, and site condemnation	✖	✖
Necessary utility costs	✖	✖
Plan checking	✖	✖
Playground safety improvements		✖
Purchase and installation of air-conditioning equipment and insulation materials and related costs	✖	✖
Replacement of portable classrooms		✖
Seismic safety improvements		✖
Site acquisition	✖	
Site development	✖	✖†
Testing	✖	✖
Upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology		✖
Utility connection and other fees	✖	✖

* Permissible if it is a like-kind replacement of a portable classroom.

† For 50 years or older modernization projects utilities work only, for permanent facilities, per SFP Regulations, Section 1859.78.7.

Site Closeout Reviews

Districts that obtain additional grants for sites that require hazardous waste removal substantiated by a Response Action will be eligible to receive up to 50 percent of one and one-half times the value of the site to monitor and clean the site. Additional costs beyond this new cap will be subject to provisions contained in section 1859.74.2 and following. For those projects where the *Application for Funding* (Form SAB 50-04), is received on or after January 1, 2004, additional costs beyond the cap are subject to adjustment whether or not the additional grants for hazardous waste removal were requested on the Form SAB 50-04.

Ineligible Expenditures

District representative should be aware that some expenditures are not permitted under the SFP. If the district representative is uncertain about a specific expenditure, the OPSC audit staff can assist the district accordingly.

The following is a list of the expenditures that may potentially be disallowed during an SFP final expenditure audit:

- Administrative and overhead costs.
- District force account labor that does not comply with the Public Contract Code.
- Modernization expenditures for:
  - *New building area that does not replace building area of "like kind."*
  - *New site development that is not for replacement, repair or additions to existing site development work.*
  - *Removal of hazardous waste from a modernization project that exceeds ten percent of the total modernization apportionment.*
  - *Costs on leased facilities unless owned by another district or county superintendent.*
  - *Acquisition and development of real estate.*
  - *Demolition costs not attributable to replacement of "like kind" building area.*
- Any expenditure that cannot be reasonably attributed to a project.
- Relocation costs that do not conform to Title 25, California Code of Regulations, Section 6000, et. seq. (see SFP Regulations, Section 1859.74(a)(1)).
- Expenditures associated with a "use of grant" (see SFP Regulations, Section 1859.77.2) SAB approval that were not constructed as specified in the original approval.
- Campus supervision that goes beyond construction site security.
- Expenditures on a financial hardship project that exceed the district's grant amount plus interest for the project.
- Interim housing expenditures associated with a new construction project subject to certain limitations.
- Relocation costs such as goodwill that is not court ordered, and the difference between the salvage value and new value of furniture and equipment costs when the business vendor retains the furniture and equipment.
- Legal fees not associated with securing a site and site condemnation, and contracts bid documentation.
- Expenditures associated with facility hardship SAB approvals that were not constructed as originally approved (see SFP Regulations, Section 1859.82).

References

- SFP Regulations, Sections 17074.25 and 1859.79.2 for modernization projects (Expenditures).
- As provided in SFP Regulations, Sections 1859.74, 1859.74.1 and 1859.75 (Site Acquisition).

This page is intentionally blank.

Section 13

Additional SFP Requirements and Features

Introduction

There are a number of topics related to the School Facility Program (SFP) that do not fit neatly into one of the other program sections. These topics are gathered here for easy reference. They may apply to new construction, critically overcrowded school facilities, joint use, and modernization or only to one program, as noted in the discussion.

General Information

Class B Index

The grant amounts in the SFP are adjusted each January based on the change in the Class B Index. This index is developed using cost data published by the Marshall Swift Company relating to buildings of primarily steel and concrete construction.

SAB Appeal Process

In some cases a school district's application may appear to be outside the standards of the SFP and the Office of Public School Construction (OPSC) is unable to recommend approval. When this occurs, a district can appeal directly to the State Allocation Board (SAB) using a *School District Appeal Request* (Form SAB 189). On this form, the district states why the SAB should grant the district's appeal based on law, regulation, or SAB policy.

Prior to the item being scheduled for SAB consideration, the OPSC will review and analyze the appeal as to legal issues, program impact, funding ramifications, and public policy considerations. Based on the evidence submitted by the district, the OPSC may support the district's request, deny the request, or provide alternative recommendations to the SAB. In any case, all of the recommendations made by OPSC to the SAB will be based on supporting laws, regulations, or legal opinions. Districts generally have a representative available at the SAB meeting to provide testimony, if needed. This process applies to all applications.

Change of Scope

The constant fluctuation of costs of materials and labor puts a great deal of pressure on school district staff who are planning construction projects, especially for financial hardship districts that do not have other funds available to cover cost overruns. Because SAB approval is based on the accompanying plans and specifications, there are limited circumstances where a SFP project may deviate from the scope of work outlined in the plans that were included with the application (see "Design with Flexibility in Mind" in Section 3, "Project Development Activities," for more information on this topic).

Additions

It is important to keep in mind that the project may not include the addition of area not proposed in the plans approved by the SAB. This applies to classrooms, MEF and non-classroom, non-MEF space. As stipulated in Regulation Section 1859.51(i)(5), the project may include the construction of more classrooms than needed to house the pupils requested in the application as specified, but these classrooms must have been in the plans submitted with the application. The flexible structuring of the bid documents will accommodate the districts' need to make decisions based on the bid results.

If the project is *non-financial hardship*, then any project savings may be retained and used for any high priority capital facilities needs or as part of the district's contribution to a future SFP project. This approach would provide an alternative method to later add facilities, if the district had not included the additional desired facilities in the plans for the project approved by the SAB. However, the law stipulates that classrooms provided by State or local funding shall be adjusted from the districts' SFP new construction baseline.

Reductions, Deletions or Modifications

Some flexibility is a recognized part of SFP construction projects. However, to continue with a project as approved by the Board, the original intent or project scope must be maintained. If modifications are considered by a district, it is critical that the affected State agencies be part of the process and that certain project requirements continue to be met. The State agencies are coordinating efforts in this area to assist districts when these situations arise. Some extenuating circumstances may be considered by the SAB, as outlined below.

Extenuating Circumstances

CHANGE PROPOSED	PROCEDURE
Deletion of Classrooms	Permitted if: • The capacity (based on the State loading standard) is sufficient to house the pupils requested in the application • CDE and DSA have approved the change • The project meets the 60 percent commensurate requirement
Reduction of MEF Area Facility remains but the square footage is reduced	Permitted if: • The remaining area proposed meets minimum MEF square footage requirements • DSA and CDE have approved the change • The project meets the 60 percent commensurate requirement • Original intent/purpose of project is maintained
Deletion of MEF Area New School Allowance may be reduced or eliminated	Permitted if: • Case-by-case review and approval by CDE • DSA has approved the change • Case-by-case consideration and approval by the Office of Public School Construction (OPSC)/SAB • The project meets the 60 percent commensurate requirement
Deletion of Non-Classroom, Non-MEF Area	Permitted if: • DSA and CDE have approved the change • The project meets the 60 percent commensurate requirement
Permanent to Modular Construction	Permitted if: • DSA and CDE have approved the changes • The project meets the 60 percent commensurate requirement • Original intent/purpose of project is maintained

Extenuating Circumstances...

CHANGE PROPOSED	PROCEDURE
Modular to Permanent Construction	Not permitted as part of the original project, because the project would receive an inequitable funding advantage due to the timing of the DSA plan approval. Districts may consider reapplication, so the desired type of construction can be built.
Changing the Placement of a Building i.e., site conditions discovered in the footprint of construction warrant building placement alteration; however, the building size and function does not change	Permitted if: • DSA and CDE have approved the change • Original intent/purpose of project is maintained

Project Savings

Districts that do not receive financial hardship assistance may retain project savings achieved by utilizing cost saving measures and efficient project management. A district may utilize these project "savings" for other high priority facility capital outlay purposes in the district.

Savings for Non-Financial Hardship Districts

Districts may expend the savings for any of its high priority capital facility needs. A district may also use the savings as a part of the match for other SFP projects, with the only requirement being that the district's share of the savings must be used towards a project of like kind. For example, the State's share of the savings on a new construction project may only be used to match another new construction project, and the State's share of the savings from a modernization project may only be used to match another modernization project.

Savings for Financial Hardship Districts

Any savings from a project that received financial hardship assistance must be used to reduce the financial hardship grant of that project or a future financial hardship project within the district. If the district has no other financial hardship projects, the savings must be remitted to the State within a period of three years. If the district has other projects and retains the savings amount, but the savings is not applied to another financial hardship within three years from the date savings is determined through audit, the savings amount plus interest earned must be returned to the State.

If the district spends more than the State grant plus district matching share, including earned interest on a financial hardship project, the district must do one of the following:

» Reduce the financial hardship contribution on that project by submitting the overspent amount; or
» Apply the overspent amount to reduce the financial hardship contribution on a future project within three years of project closeout; or
» Retain the overspent amount if a financial hardship application is not submitted for a period of three years from the date of the last financial hardship approval.

Restricted Maintenance Account

The SFP requires participating school districts to assure that a State funded project is kept in good repair. To meet this requirement, school districts must establish and maintain a restricted maintenance account within the district's general fund to be used for ongoing and major maintenance of school buildings. Each school district must publicly approve an ongoing and major maintenance plan that outlines the use of funds deposited into the maintenance account.

Each fiscal year and for a period of 20 years after receiving funds through the SFP, the district must deposit in the maintenance account no less than three percent of the district's total general fund budget. Unified school districts with an average daily attendance (ADA) of 1200 or less, elementary school districts with an ADA of 900 or less, and high school districts with an ADA of 300 or less may deposit less than the three percent minimum by certifying that the district can reasonably maintain its facilities with a lesser dollar level maintenance account.

Verification that districts have complied with this requirement will be made through the California Department of Education (CDE) at the time of audit and beyond, and will be based upon budget information submitted by the districts to the CDE.

Facilities Inspection System (Williams Settlement Requirement)

Beginning with the 2005/2006 fiscal year, school districts and county offices of education are required to establish a Facilities Inspection System (FIS) as a condition of participation in the School Facility Program, pursuant to Senate Bill 550 which modified Education Code, Section 17070.75(e). The requirements of the FIS are not defined in law other than to state the system should ensure that each school of the district or county office of education is maintained in good repair.[1] The design of the FIS should be determined at the local level. The one exception is for the school sites meeting the requirements of Education Code, Section 17592.70(b). The needs assessments conducted at these school sites are to be the baseline for the FIS (Education Code, Section 17592.70(d)(3)). To implement this requirement, the OPSC has included certification language on the *Application for Funding* (Form SAB 50-04), the *Application for Joint-Use Funding* (Form SAB 50-07), and the *Application for Charter School Preliminary Apportionment* (Form SAB 50-09).

References

» Education Code, Section 17070.75(a)
» SFP Regulations, Section 1859.91, "Implementation of Priority Points Due to Insufficient State Funds."
» SFP Regulations, Section 1859.92, "Priority Points for New Construction Projects."

[1] The Interim Evaluation Instrument, adopted on January 24, 2007 by the State Allocation Board, defines "good repair."

Appendix 1

State Agency Contact Information

Department of General Services

Office of Public School Construction (OPSC)
Ms. Lori Morgan, Acting Executive Officer
1130 K Street, Suite 400
Sacramento, CA 95814
916.445.3377 Tel
916.324.0623 Fax
www.opsc.dgs.ca.gov

Division of the State Architect (DSA)
Mr. David Thorman, FAIA, State Architect
1102 Q Street, Suite 5100
Sacramento, CA 95814
916.445.4167 Tel
916.324.0207 Fax
www.dsa.dgs.ca.gov

DSA Regional Offices

Los Angeles Basin
700 North Alameda Street, Suite 5-500
Los Angeles, CA 90012
213.897.3995 Tel

Sacramento
1102 Q Street, Suite 5200
Sacramento, CA 95814
916.445.8730 Tel

San Diego
16680 West Bernardo Drive
San Diego, CA 92127
858.674.5400 Tel

San Francisco Bay Area
1515 Clay Street, Suite 1201
Oakland, CA 94612
510.622.3101 Tel

California Department of Education

School Facility Planning Division
Ms. Kathleen Moore, Director
1430 N Street, Suite 1201
Sacramento, CA 95814
916.322.2470 Tel
916.322.3954 Fax
www.cde.ca.gov/facilties/

Department of Toxic Substances Control

Ms. Maureen Gorsen, Director
1001 I Street
Sacramento, CA 95814-2828
916.324.1826 Tel
www.dtsc.ca.gov

Department of Industrial Relations

Mr. John Rea, Acting Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
415.703.5050 Tel
www.dir.ca.gov

Appendix 2
Potential State Agency Involvement

This listing is only a sample of potential State agency involvement. There are many other agencies throughout the State that may become involved in the school construction process.

Potential State Agency Involvement List

AGENCY NAME/CONTACT INFORMATION	ROLE
California Energy Commission **www.energy.ca.gov** • Bright School Program Elizabeth Shirakh 916.654.4089	Helps schools identify ways to reduce energy use in school facilities.
Department of General Services **Office of Small Business Certification and Resources** **www.pd.dgs.ca.gov/smbus** • Disabled Veteran Business Enterprise Participation Program 916.375.4940	Provides a listing of certified DVBE firms. Note: The DVBE Program administered by the Department of General Services does not apply to school district's contracts.
Department of Health Services **www.dhs.ca.gov** • California Indoor Air Quality Program 510.620.2800	Provides assistance and training to school districts that have air quality problems.
Department of Transportation **www.dot.ca.gov** • District Transportation Planning Division 916.653.0913	Determines whether a school is likely to have an impact on the State transportation system or any of its facilities.
Office of Emergency Services Hazard Mitigation **www.oes.ca.gov** • Public Assistance 916.845.8200	Provides funds for school construction projects that reduce or eliminate future damage from disasters (seismic retrofit, modernization, flood control). Administer both federal and state funding for repair and replacement of eligible facilities damaged by a disaster event.
Office of Planning and Research **www.opr.ca.gov** • State Clearinghouse 916.445.0613 state.clearinghouse@opr.ca.gov	Distributes state required environmental documentation to various governmental agencies for review and comment as part of the CEQA process.

This page is intentionally blank.

Appendix 3
School Facility Program Required Forms

The following forms are used in conjunction with the School Facility Program (SFP). It is the user's responsibility to check the Office of Public School Construction (OPSC) Web site (SAB Forms) for the most current version of the form as older versions of the form may not be accepted.

- Enrollment Certification/Projection (Form SAB 50-01)
- Existing School Building Capacity (Form SAB 50-02)
- Eligibility Determination (Form SAB 50-03)
- Application for Funding (Form SAB 50-04)
- Fund Release Authorization (Form SAB 50-05)
- Expenditure Report (Form SAB 50-06)
- Application for Joint-Use Funding (Form SAB 50-07)
- Application for Preliminary Apportionment (Form SAB 50-08)
- Application for Charter School Preliminary Apportionment (Form SAB 50-09)

This page is intentionally blank.

Appendix 4
Services Matrix

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the school district as owner. A lack of clarity regarding responsibilities may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

The Services Matrix is the work of a small group formed by the Joint Committee on School Facilities. District representatives may wish to consult the matrix to determine all of the responsibilities to be assigned on a project and to avoid duplication of effort.

The Services Matrix attempts to accomplish four principle objectives:

- Identify those tasks in a typical school construction or renovation project which must be performed by specific team members.
- Identify the tasks which cannot be performed by certain team members.
- Identify tasks which may be assigned to any of several team members at the owner's discretion.
- Provide the owner with a tool for use in making decisions about task assignments and preparing contracts for services.

The Services Matrix addresses a project which has a construction manager as one team member. In projects where this is not the case, the tasks assigned to the construction manager could typically be performed by either the architect, inspector of record, or the owner.

Services Matrix: Pre-Design Phase

The Services Matrix addresses a project which has a construction manager as one team member. In projects where this is not the case, the tasks assigned to the construction manager could typically be performed by either the architect, inspector of record, or the owner.

	RESPONSIBLE PARTY					
TASK	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Design professional selection	●	✖	◗	✖	✖	✖
Master project schedule (concept thru occupancy) and schedule monitoring	●	◗	◗	✖	✖	✖
Complete district specifications and standards	●	◗	◗	✖	✖	✖
Existing record drawings	●	◗	◗	✖	✖	✖
Site surveys	●	◗	◗	✖	✖	✖
Soils investigation	●	◗	◗	✖	✖	✖
Hazard materials data, EIRs, etc.	●	◗	◗	✖	✖	✖
Appraisals	●	◗	◗	✖	✖	✖
Detailed written program	●	◗	◗	✖	✖	✖
Base sheets for "As builts" (existing buildings only)	◗	●	◗	✖	✖	✖
Site investigations to gather data on existing conditions	◗	●	◗	✖	✖	✖
Data collection/meetings with facilities staff	◗	●	◗	✖	✖	✖
Data collection/meetings with design committee	◗	●	◗	✖	✖	✖
Priorities for any additional funding	●	◗	◗	✖	✖	✖
Project budgets/cost analysis	●	◗	◗	✖	✖	✖
Preparation of Office of Public School Construction (OPSC) applications	●	◗	◗	✖	✖	✖
Investigation of Division of the State Architect (DSA) requirements/status	◗	●	◗	✖	✖	✖
Investigation of SFM requirements/status	◗	●	◗	✖	✖	✖
Investigation of California Department of Education (CDE) requirements	◗	●	◗	✖	✖	✖
Investigation of applicable requirements of local agencies having jurisdiction (i.e., health, fire, public works, utilities, etc.)	◗	●	◗	✖	✖	✖
Develop Information Management Plan	●	◗	◗	✖	✖	✖
Develop Cost Management Plan	●	◗	◗	✖	✖	✖

Matrix Key

✖ Party cannot be responsible
● Party is typically responsible
◗ Party may be assigned responsibility (Owner's choice)
■ Party must be responsible, task not assignable to others

Services Matrix: Design Phase

TASK	RESPONSIBLE PARTY					
	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Schematic Design Drawings	✖	■	✖	✖	✖	✖
Design Development Drawings	✖	■	✖	✖	✖	✖
Cost Estimating and Budget Tracking	◗	◗	●	✖	✖	✖
Value Engineering	◗	◗	●	✖	✖	✖
Preparation of Construction Document production schedule	◗	●	◗	✖	✖	✖
Master Project Schedule monitoring/reporting	◗	◗	●	✖	✖	✖
Preparation of final Construction Documents (drawings and technical specifications)	✖	■	✖	✖	✖	✖
Preparation of "boiler plate" Specifications (invitation to Bid, Proposals, General Conditions, Supplemental Special Conditions)	◗	●	◗	✖	✖	✖
Preparation of Alternate (Cost Adjustments)	✖	■	✖	✖	✖	✖
Quality Control and coordination of Construction Documents	✖	■	✖	✖	✖	✖
Preparation of OPSC application documents	●	◗	◗	✖	✖	✖
DSA Plan Review submittals and approvals	✖	■	✖	✖	✖	✖
Local Agency Plan Review submittal and approvals	✖	■	✖	✖	✖	✖
Independent Coordination and Constructibility Plan Review	◗	◗	●	◗	✖	✖
Maintenance and Operations Staff Plan Review	■	✖	✖	✖	✖	✖
Facilities Staff Plan Review	■	✖	✖	✖	✖	✖
Design Committee Plan Review	■	✖	✖	✖	✖	✖
Packaging of Documents for bidding	✖	✖	■	✖	✖	✖
OPSC Plan Review submittals and approvals	◗	●	◗	◗	✖	✖
California Department of Education Plan Review and approvals	◗	●	◗	◗	✖	✖
Coordinate results of various reviews, resolve conflicting comments	✖	■	✖	✖	✖	✖
Verify that all plan review issues are resolved	✖	■	✖	✖	✖	✖
Cash Flow projection reports	◗	◗	●	✖	✖	✖
Tracking OPSC funding status	●	◗	◗	✖	✖	✖
Construction Market Study	◗	◗	●	✖	✖	✖
Develop Contractor Work Scopes (Multi-Prime only)	✖	✖	■	✖	✖	✖
Prepare Cost Estimates by Work Scope (Multi-Prime only)	✖	✖	■	✖	✖	✖

Matrix Key

- ✖ Party cannot be responsible
- ◗ Party may be assigned responsibility (Owner's choice)
- ● Party is typically responsible
- ■ Party must be responsible, task not assignable to others

Services Matrix: Bid and Award Phase

TASK	RESPONSIBLE PARTY					
	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Reproduction and distribution of Bid Documents	◗	●	◗	✖	✖	✖
Advertising and Legal notices	●	◗	◗	✖	✖	✖
Contractor marketing/bidder's interest campaign	✖	◗	●	✖	✖	✖
Contractor pre-qualification	●	◗	◗	✖	✖	✖
Pre-Bid meeting (Single Contact)	✖	●	◗	✖	✖	✖
Pre-Bid meeting (Multi-Prime Construction Management Contract)	✖	◗	●	✖	✖	✖
Answer bidder's questions/interpret bid documents	✖	■	✖	✖	✖	✖
Addenda	✖	■	✖	✖	✖	✖
Bid opening	●	◗	◗	✖	✖	✖
Recommendation for award to Owner	✖	●	◗	✖	✖	✖
Preparation of OPSC post-bid documents	◗	●	✖	✖	✖	✖
Draft and Issue contract	●	◗	◗	✖	✖	✖
Review Contractor insurance and bonds	●	◗	◗	✖	✖	✖
Issue Notice to Proceed	●	◗	◗	✖	✖	✖
Prepare reports to District Bond Committee	●	◗	◗	✖	✖	✖
Public Relations activities/presentations	●	◗	◗	✖	✖	✖
Pre-construction meeting	◗	◗	●	◗	✖	✖
Contract Administration and coordination of multiple trade contractors (Multi-Prime Construction Management only)	✖	✖	■	✖	✖	✖
Continuous On-Site Supervision for Owner	✖	✖	■	✖	✖	✖
Continuous On-Site Supervision for Contractor	✖	✖	✖	✖	✖	■
Construction Schedule	✖	✖	✖	✖	✖	■
Monitor On-Site Safety Program	✖	✖	●	✖	✖	◗
Off-site construction permit acquisition	✖	✖	✖	✖	✖	■
Evaluations and approval of substitution requests	✖	■	✖	✖	✖	✖
Cash Flow projection reports	✖	◗	●	✖	✖	✖
Submittal/Shop Drawing Schedule	✖	◗	●	✖	✖	◗
Review and approval of Submittals/Shop Drawings	✖	■	✖	✖	✖	✖
Answering Requests for Information (RFIs)	✖	■	✖	✖	✖	✖

Matrix Key

✖ Party cannot be responsible
● Party is typically responsible
◗ Party may be assigned responsibility (Owner's choice)
■ Party must be responsible, task not assignable to others

Services Matrix: Bid and Award Phase...

TASK	RESPONSIBLE PARTY					
	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Tracking of RFIs	✖	◗	●	◗	✖	◗
Evaluation of Change Order requests—costs and/or time extensions	◗	◗	●	◗	✖	✖
Approval of Change Orders	✖	■	✖	✖	✖	✖
Tracking status of all Change Order requests	✖	◗	●	◗	✖	✖
Review/Observation of overall quality of Construction work	✖	●	◗	◗	◗	✖
Review/Observation of technical aspects of compliance with construction documents	✖	●	✖	◗	◗	✖
Review and Approve Contractor's solutions/recommendations for correction of observed non-conforming work	✖	●	✖	◗	◗	✖
Review of Contractor's Schedule of Values and Pay Requests	◗	◗	●	◗	✖	✖
Approval of progress payment requests	◗	●	✖	◗	✖	✖
Site/staff interface and coordination (at existing facilities)	◗	◗	●	◗	✖	◗
Coordinate interim housing (at existing facilities)	◗	◗	●	◗	✖	◗
Hazardous material inspection (at existing facilities)	■	✖	✖	✖	✖	✖
Means, methods and materials of construction	✖	✖	✖	✖	✖	■
Construction progress/site meetings	◗	◗	●	◗	✖	◗
Coordination of technical inspections and testing	✖	✖	✖	●	◗	◗
DSA required progress reports	◗	●	✖	◗	✖	◗
Coordination with DSA and SFM inspectors	✖	✖	✖	●	◗	✖
Resolution of Owner/Contractor disputes	●	◗	◗	◗	✖	✖
Scheduling of start-up, testing, adjusting and balancing of equipment	✖	✖	●	◗	✖	✖
Cleanup	✖	✖	✖	✖	✖	■
Preparation of Punchlist	◗	●	◗	◗	✖	✖
Punchlist work completion	✖	✖	✖	✖	✖	■
Punchlist of completed work	◗	●	◗	◗	◗	✖
DSA close-out documents	◗	●	◗	◗	◗	◗
OPSC close-out documents	●	◗	◗	✖	✖	✖
Documentation of "as built" changes to drawings	✖	◗	◗	●	✖	◗

Matrix Key

- ✖ Party cannot be responsible
- ● Party is typically responsible
- ◗ Party may be assigned responsibility (Owner's choice)
- ■ Party must be responsible, task not assignable to others

Services Matrix: Bid and Award Phase...

TASK	RESPONSIBLE PARTY					
	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Preparation on final "as built" drawings	✖	◗	◗	◗	✖	●
Occupancy/Fire Marshal	◗	◗	◗	●	✖	◗
Warranty, operation and maintenance certificates, documentations and materials	◗	●	◗	✖	✖	✖
Schedule training sessions for district maintenance staff	◗	◗	●	✖	✖	✖
Warranty inspection and report (prior to 12 month expiration)	●	◗	◗	✖	✖	✖

Matrix Key

- ✖ Party cannot be responsible
- ● Party is typically responsible
- ◗ Party may be assigned responsibility (Owner's choice)
- ■ Party must be responsible, task not assignable to others

Appendix 5

Summary of Bond and Deferred Maintenance Allocations

The programs, funding, and approvals over the period since 1990 are shown in the following table:

Summary of Bond Allocations

	NOVEMBER 1998	NOVEMBER 2002	MARCH 2004	NOVEMBER 2006	TOTAL
New Construction	$ 2,900,000,000	$ 6,250,000,000[1]	$ 4,960,000,000	$ 1,900,000,000[5,6]	$16,010,000,000
Modernization	2,100,000,000	3,300,000,000[2]	2,250,000,000	3,300,000,000[5]	10,950,000,000
Charter Schools	—	100,000,000	300,000,000	500,000,000	900,000,000
Career Technical Education	—	—	—	500,000,000	500,000,000
Overcrowding Relief	—	—	—	1,000,000,000	1,000,000,000
High Performance Schools	—	—	—	100,000,000	100,000,000
Hardship	1,000,000,000	—	—	—	1,000,000,000
Class-Size Reduction	700,000,000	—	—	—	700,000,000
Critically Overcrowded Schools	—	1,700,000,000	2,440,000,000	—	4,190,000,000
Joint Use	—	50,000,000	50,000,000	29,000,000	129,000,000
Total Bond Funds	$ 6,700,000,000	$11,400,000,000	$10,000,000,000[3]	$ 7,329,000,000	$35,429,000,000

[1] $14.2 million for energy efficiency.

[2] $5.8 for energy efficiency.

[3] $20 million for energy efficiency set aside for new construction and modernization.

[4] No more than $250,000,000 of the sum of the appropriations for new construction and modernization shall be used to fund the smaller learning communities and small high schools.

[5] Up to 10½ percent ($199.5 million) shall be available for purposes of seismic repair, construction, or replacement, pursuant to Education Code, Section 17075.10.

Summary of Deferred Maintenance Allocations (Millions of Dollars)

	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	TOTAL
Excess Repayments	$ 29.3	$ 25.7	$ 20.7	$ 18.1	$ 15.6	$ 14.0	$ 13.5	$ 276.4	$ 448.3
Legislation/Other Sources	137.6	143.7	176.1	176.3	208.0	85.5	254.0	8.0	1,289.2
Total	$ 166.9	$ 169.4	$ 196.8	$ 194.4	$ 223.6	$ 99.5	$ 267.5	$ 284.4	$1,737.5

Working together to improve the educational environment for California's children

Deferred Maintenance Program Handbook

A guide to assist school districts in applying for and obtaining "grant" funds for the purposes of performing deferred maintenance work on school facilities

June 2007

State of California
Arnold Schwarzenegger, Governor

State and Consumer Services Agency
Rosario Marin, Secretary

Department of General Services
Will Bush, Director
Will Semmes, Chief Deputy Director

State Allocation Board
Office of Public School Construction
Rob Cook, Executive Officer – SAB/OPSC
Lori Morgan, Deputy Executive Officer – SAB/OPSC
Mavonne Garrity, Assistant Executive Officer – SAB

Prepared on behalf of the
State Allocation Board

by the
Office of Public School Construction
1130 K Street, Suite 400
Sacramento, CA 95814

916.445.3160 Tel
916.445.5526 Fax
www.opsc.dgs.ca.gov

Contents

Preface

Introduction

This handbook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining "grant" funds for the purposes of performing deferred maintenance work on school facilities. It is intended to be an overview of the program for use by school districts, architects, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for the two different types of State funding available. However, it is not meant to be a step-by-step discussion of every conceivable application process, project type, or the eligibility of expenditures. For complete project specific information review the Deferred Maintenance Program (DMP) Regulations located on the OPSC Web site at www.opsc.dgs.ca.gov and, most importantly, contact your Deferred Maintenance project manager.

Things To Know

This edition of the *Deferred Maintenance Program Handbook* is a result of changes to the program based on new legislation and the State Allocation Board's (SAB) regulation changes. These changes were undertaken by the OPSC in an effort to strive for unity within regulations, forms, previous SAB policies, and handbook.

Things the reader should keep in mind are:

- Lead Abatement. Inspection, sampling, analysis, control, management, and removal of lead-containing materials.
- Clean Restroom Legislation (SB 892). Legislation which added Section 35292.5 to the EC requiring district's to maintain their restroom facilities. Failure to comply with this Section may result in the withholding of the district's Deferred Maintenance Basic Grant apportionment.
- Please refer to Regulation Section 1866 if you are unfamiliar with a term used in this handbook.

Where To Begin

Section 1, Deferred Maintenance Program Overview; Section 2, Five Year Plan and Basic Grant; Section 4, Project Expenditures along with the appendices contains the information that affects most districts. These sections will provide the reader with the essential program elements to receive the Basic Grant, for which all districts may apply. Section 3, Extreme Hardship Grant is an additional grant beyond the district's Basic Grant and may be available to a district if it has a project meeting the requirements stated in the introduction section of this section.

This page is intentionally blank.

Section 1
Deferred Maintenance Program Overview

Introduction

The Deferred Maintenance Program (DMP) provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components so that the educational process may safely continue. Typically, this includes roofing, plumbing, heating, air conditioning, electrical systems, wall systems, floor systems, etc. An annual Basic Grant is provided to districts for the major repair or replacement work listed on the *Five Year Plan* (Form SAB 40-20), which is a projection of deferred maintenance work to be performed on a district wide basis over the next five years. An Extreme Hardship Grant is provided in addition to the Basic Grant if the district has a critical project on the five year plan that must be completed within one year due to health and safety or structural reasons.

The Law and Regulations

The DMP is subject to the provisions of California Education Code (EC), Section 17582 through 17588 and 17591 through 17592.5 and the State Allocation Board (SAB) Regulations, Title 2, California Administrative Code, Sections 1866 through 1866.14. Applicant districts are responsible for complying with all laws and regulations for any project undertaken pursuant to the requirements of the DMP. If the district's project contains work that requires Division of the State Architect (DSA) approval, the final plans and specifications for the project must have DSA approval prior to a district signing a contract for construction. If a district enters into a contract for construction prior to receiving DSA approval of the plans and specifications, State funding may not be provided.

In making an apportionment, the SAB shall assume no legal responsibility for any lawsuits or liens filed against an applicant school district. Neither the State nor any State department or agency thereof, in making an apportionment, shall be required to assume any responsibility not otherwise imposed upon it by law.

Program Funding

The DMP receives it's funding annually. Funding is made available primarily from three sources:

- Excess repayments from the State School Building Aid Program (SSBAP).
- State School Site Utilization Funds.
- Funds provided through the Budget Act for the State School Deferred Maintenance Fund.

In recent years, program funding has mainly relied on the funds provided through the Budget Act. This is due to the decrease of funding in the SSBAP and site utilization funds as payments into these programs dwindle. Unallocated carryover from the prior fiscal year is also used to fund the program.

Available Funding Types

The apportionment types allowed under the Deferred Maintenance Law are:

Apportionment Types

TYPE	EDUCATION CODE	PAGE
Basic Grant	Section 17584(a)	4
Extreme Hardship Grant	Section 17587*	7

* Not less than one-half of all funds made available by EC Section 17587 is to be apportioned to school districts that had an average daily attendance of less than 2,501 during the prior fiscal year.

The amount of funding available for both grant types fluctuates each fiscal year. An item to apportion both the Basic Grants and Extreme Hardship Grants is generally taken to the SAB for approval after December 1st.

Eligible Deferred Maintenance Projects

The DMP is made up of 12 project categories or types of work that are outlined in EC Section 17582 or otherwise approved by SAB. Most of the project categories are building systems that are necessary components of a facility, without which the building would not be able to function for school purposes. A deferred maintenance project must conform to one of these categories in order for a district to place a project on the five year plan or apply for an Extreme Hardship Grant. For sample project types, please refer to Appendix 1.

Program Participation

Entities that operate as a K–12 public elementary, unified, or high school districts, county superintendent of schools, or one of the regional occupational centers identified in law beginning with EC Section 17582, may participate in the DMP.

Disabled Veteran Business Enterprises Policy

Participation goals are not currently required for projects funded by this program.

Clean Restroom Legislation (SB 892)

Senate Bill 892, Chapter 909, Statutes 2004, added Section 35292.5 to the EC. This Section relates to the sufficiency and availability of restroom facilities in public schools. The OPSC provides a procedure for concerned parties to file complaints regarding the condition of public school restrooms. If a school district has been found to be in violation of EC Section 35292.5, it must take the appropriate action to correct the violation(s) and submit an SAB Form 892R, *Response to Restroom Maintenance Complaint* to the OPSC. Failure to address the violation outlined in the complaint may result in the withholding of the district's Deferred Maintenance Basic Grant apportionment.

Section 2
Five Year Plan and Basic Grant

Introduction

A Basic Grant is available to eligible districts that have a current *Five Year Plan*, Form SAB 40-20 approved by the State Allocation Board (SAB) that encompasses the fiscal year of funding. The Basic Grant and the district's matching share is to be used for projects listed on the SAB approved *Five Year Plan*, Form SAB 40-20.

Helpful Hint:
The SAB does not fund the projects on the district's five year plan but rather approves the five year plan and the proposed projects.

Five Year Plan: Submittals and Revisions

A *Five Year Plan* is good for a period of five fiscal years. The intent of the plan is to forecast deferred maintenance projects within the district over the next five years. It is not intended to be an expenditure report; therefore the project costs reported should be estimates. The district does not have to perform all the work listed on the plan. New or revised plans for the current fiscal year shall be submitted to the Office of Public School Construction (OPSC) by the last working day in June for that fiscal year.

The *Five Year Plan* allows for a district to designate an individual that has been approved by the District's Governing Board to act on behalf of the district and which the OPSC can contact regarding the DMP. If Part One of the *Five Year Plan* is not completed, the district superintendent must sign the form and OPSC's point of contact will be the superintendent.

Beginning with the 2005–2006 fiscal year, school districts and county offices of education are required to establish a Facilities Inspection System (FIS) as a condition of participation in the DMP, pursuant to Senate Bill 550 which modified Education Code (EC) Section 17070.75(e). The requirements of the FIS are not defined in law other than to state the system should ensure that each school of the district or county office of education is maintained in good repair.[1] The design of the FIS should be determined at the local level. The one exception is for the school sites that were identified by the California Department of Education (CDE) as ranked in deciles one to three based on the 2003 Academic Performance Index and were newly constructed prior to January 1, 2000. (The CDE published a list of the schools ranked in deciles one to three and can be found on their Web site at www.cde.ca.gov.) The needs assessments conducted at these school sites are to be the baseline for the FIS (EC Section 17592.70(d)(3)). To implement this requirement, the OPSC has included certification language on the *Five Year Plan*.

Prior to submitting a new or revised version of the plan, the proposals and plans for expenditure of funds for the deferred maintenance of school district facilities must be discussed in a public hearing at a regularly scheduled school board meeting.[2] The district will be asked in the certification section of the form to enter the date this occurred. Each time a revised plan is submitted to the OPSC, this requirement must be adhered to.

---

[1] The Facilities Inspection Tool, adopted on June 27, 2007 by the SAB, defines good repair.
[2] Regulation Section 1866.4(3)

A district may amend its approved Five Year Plan as needed for the current and future fiscal years. Plan revisions are not required for estimated cost changes or for moving a project already listed on the plan into a different fiscal year. A revised plan should be submitted to the OPSC for any one of the following:

- The plan has expired.
- Deferred maintenance work will be performed that is currently not listed on the plan or at a school not on the plan.
- If the exact same work was entirely paid for under the School Facility Program (SFP) Modernization or Federal Renovation Program the plan would need to be resubmitted removing the project(s).

The fiscal year in which a district revises the plan will become the starting year for the plan and will project four fiscal years out. The OPSC will not accept revisions to the *Five Year Plan* for prior fiscal years.

Eligible Projects

To place a project on the *Five Year Plan* it must meet all the following criteria:

- Be either a repair and replacement project for one of the school facility components stated in law or approved by the SAB; which have approached or exceeded their normal life expectancy; and,
- Located within district owned facilities that are used for school purposes.

Helpful Hint:
In order to use a facility for school purposes, it must be either Division of State Architect (DSA) approved or have a waiver.

Components with a history of continued repairs indicating a shortened life expectancy may be included as eligible items. Districts currently leasing relocatables from the State Relocatable Classroom Program are exempted from the requirement of "district-owned" and can include deferred maintenance projects for these facilities on the district's *Five Year Plan* provided it meets the remaining requirements stated above.

For County Office of Education (COE) only, a law change expanded the facilities in which deferred maintenance funding could be used.[3] The law defined school buildings for county offices to include those facilities that are exempt from the Field Act. If the county is leasing a facility, which meets this requirement, the lease must require the COE to maintain the facility in order to expend deferred maintenance funds on the building.

Basic Grant

The maximum amount provided by law for the Basic Grant is based on a formula detailed in EC Section 17584(a). The calculation of the maximum amounts is made by the California Department of Education (CDE).

The funding level for County Superintendents of Schools (CSS) will be calculated using the formula of one-half of one percent of their total general funds and adult education funds budgeted by CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, debt service, or revenues that are passed through to other local educational agencies.

Basic Grant Apportionment

The SAB apportions funds for the DMP one year in the arrears. Based on the amount of funds available, a district or COE may receive the maximum amount calculated by the CDE, known as the "Maximum Basic Grant" or a prorated amount, known as the "Prorated Basic Grant". The apportionment is subject to the district matching the allocated State funds.

---

[3] EC Section 17582(a)

A district that receives an Extreme Hardship Grant will receive the Maximum Basic Grant to contribute to its critical project. For more information on extreme hardship funding requirements, please refer to page 10.

Deposit of District Funds

In order to receive State Deferred Maintenance funds, the governing board of a school district is required to establish a restricted fund referred to as the "District Deferred Maintenance Fund" (DDMF).

Annually, districts participating in the DMP will make a deposit into the DDMF and have their COE certify the funds on deposit. By the COE submitting the *Certification of Deposit*, Form SAB 40-21, which is due to the OPSC 60 days after SAB apportionment of the Basic Grant, the district shall receive matching State funding on a dollar for dollar basis, up to the amount apportioned. Any money deposited into this fund and any interest earned must be used for projects listed on the district's SAB approved Five Year Plan. This fund is subject to an annual audit at the local level.

The district's deposit must be a cash contribution from any non-restricted fund, unmatched carryover, or from the district's restricted Ongoing and Major Maintenance Account.[4] Annual deposits to that account in excess of two and one-half (2½) percent of the district general fund budget may be counted towards the district's matching share.

Matching the Maximum

If a district does not deposit the Maximum Basic Grant as calculated by the CDE, EC Section 17584.1(b) requires the district's local governing board to submit a report (by the following March 1st) to the Legislature. The report is to include a schedule of the deferred maintenance needs for the current fiscal year and an explanation of how the district plans on meeting its current need without depositing the Maximum Basic Grant. For specific information regarding the report requirements, please refer to EC Section 17584.1.

Also, it is important to note that school districts with schools eligible to participate in the Emergency Repair Program must deposit an amount equal to the maximum basic grant to be eligible to receive funding from that program pursuant to the Emergency Repair Program Regulation Section 1859.328.

Transfer of Excess Funds and Carryover

Districts are encouraged to use any unmatched State funds on other deferred maintenance projects listed on the approved Five Year Plan. However, EC Section 17583 allows a district to transfer any unmatched State funds to other expenditure classifications in the district. If a district elects to transfer funds to purposes other than deferred maintenance, a school board resolution approving the transfer by a two-thirds vote is required. Districts are required to file the resolution with the county superintendent of schools and the county auditor. A report pursuant to EC Section 17584.1 will need to be filed if the district transfers any unmatched State funds out of the DDMF.

If the district elects not to transfer the excess funds deposited to another expenditure classification, the excess funds deposited may be carried over and used to offset some or all of the match required for a subsequent fiscal year. Carryover that has been reported on the *Certification of Deposits*, Form SAB 40-21 is considered matched and therefore cannot be applied as carryover in subsequent fiscal years.

---

[4] Regulation Section 1866.4.3

Fund Release

Once the OPSC receives the Certification of Deposits, Form SAB 40-21 from the COE, the OPSC will generate a fund release. A State warrant (not to exceed the lesser of the amount apportioned or the deposit by the district) will be issued in the county's name by the State Controller's Office for deposit into the district's fund. Funds can be expected within three weeks of OPSC's receipt of the Form SAB 40-21. If the district receives an Extreme Hardship Grant the Basic Grant will not be released until the *Fund Release Authorization* (Form SAB 40-23) is processed.

Section 3
Extreme Hardship Grant

Important Note:
The OPSC must determine the hardship project is eligible for State funding prior to the start of construction. A project started prior to this determination will not be recommended for apportionment by the SAB. If the project meets the requirements of a Priority One as stated in Regulation Section 1866.5.3(c), contact OPSC immediately.

Introduction

Applications for an Extreme Hardship Grant are accepted on a continuous basis throughout the fiscal year. Those received prior to the last working day in June are ensured consideration in the next funding cycle. An extreme hardship exists when the SAB determines the existence of all of the following:

- **Financial Test:** The total estimated cost of the critical project is greater than two times the district's maximum basic grant; and,
- **Health and Safety Test:** The district has a critical project on its Five Year Plan which, if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils.

Eligible Project

An application may include work to repair or replace an existing school building component, located within existing district owned classrooms and/or subsidiary facilities and other non-classroom space located on a school site. Each facility component (i.e., roofing) at a school site makes up one project. A district with only one school may include other essential work (i.e., multiple components), as long as all projects individually meet the above tests, without being subject to the multiple project district contribution requirements stated on page 10.

Extreme Hardship Application Package

Helpful Hint:
If the district has additional reports from a roofing company, environmental or mechanical engineer, submitting those in addition to the architect or structural engineers report will help OPSC in it's review of project eligibility.

The following documents are required in order for the application to be deemed complete.

Required Documents for a Complete Application

FORM NUMBER	DOCUMENT
SAB 40-20	A revised Five Year Plan, Form SAB 40-20 including the critical project and identifying it in Column 9 of the form.
SAB 40-22	Extreme Hardship Funding Application with all costs rounded to the nearest dollar. Final costs must match the totals shown on the architect's cost estimate.
None	Detailed cost estimate prepared by a licensed architect or contractor showing quantity and unit cost breakdowns (rounded to the nearest dollar) supporting the construction costs listed. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost publication and at the OPSC's direction, the DSA. Items in the cost estimate shall be limited to only the minimum work necessary to mitigate the problem. Lump sums are not allowed.

continued on following page...

Required Documents for a Complete Application...

FORM NUMBER	DOCUMENT
None	Licensed architect or structural engineer's report detailing: 1. How the project qualifies as a hardship as defined in EC Section 17587. 2. A recommended solution to correct the problem. 3. Detailed description of work being performed.
None	Plot plan identifying location of work with all buildings or areas of work clearly labeled.

A district with only one school that is applying for more than one project category will need to submit an *Extreme Hardship Funding Application*, Form SAB 40-22, for each project category and an SAB 40-22 that combines all the projects into one request.

The Extreme Hardship application package is reviewed by the Office of Public School Construction (OPSC) for completeness and placed on a Deferred Maintenance Extreme Hardship workload list by received date order. The workload list can be viewed on the OPSC Web site at www.opsc.dgs.ca.gov. The applications are then processed in date order for presentation to the SAB for consideration.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the OPSC will return the application unprocessed with notification of the missing documents. Should this occur, the district may resubmit the application once the required information is available.

Multiple Extreme Hardship Funding Requests

A district may submit more than one *Extreme Hardship Funding Application*, Form SAB 40-22 in a fiscal year as long as each project meets the financial, and health and safety test.

Assignment of Application Number

Upon submittal of an Extreme Hardship Funding Application, Form SAB 40-22, an application number will be assigned to the project. Following the prefix "40", this number will be the five digit code in the California Public School Directory, the last two digits of the beginning fiscal year, in which the district is applying for funding, and lastly the number of projects submitted by the district. For example:

» 40/99999-02-01

The above number would represent a district's first 2002/2003 Fiscal Year critical project. Districts should use this number when corresponding with the SAB/OPSC.

OPSC Review

After the acceptance of the complete application, the OPSC will process it based on the date received. The OPSC will then conduct a site visit to verify the conditions stated in the architect's or structural engineers report. A follow-up letter after the site visit may be sent requesting additional information. Once all the back-up for the project is received, the OPSC will determine if the project meets the tests stated in law and will notify the district of it's findings. Construction may begin after the OPSC site visit, however, there is no quarantee of OPSC's recommendation for funding until the district has received written notification. Projects that meet the requirements will be presented to the SAB for approval.

Determination of Extreme Hardship Grant and District Contribution 2002/2003 FY Projects and Beyond

The total estimated cost of the critical project will determine how the extreme hardship grant is calculated and the amount of funding the district will contribute to the project. The following chart details the different district contribution requirements for a critical project:

Helpful Hint:
Cost increases for 2002/2003 Fiscal Year projects and beyond where the revised total project cost exceeds $1,000,000, will be subject to the new district contribution requirements.

District Contribution for a Critical Project

DISTRICT'S MAXIMUM BASIC GRANT AND STATE'S MATCH	TOTAL PROJECT COST	PROJECT NUMBER	DISTRICT CONTRIBUTION REQUIREMENT
Under $1,000,000	Under $1,000,000	First Project	Maximum Basic Grant and State's matching share for the fiscal year the project was funded.
Under $1,000,000	Above $1,000,000	First Project	Maximum Basic Grant and State's matching share for the fiscal year the project was funded AND 50 percent of all costs above $1,000,000.
Under $1,000,000	Any Amount	Second and Subsequent Projects or addltional projects from a different fiscal year receiving funding.	Fifty percent of the total project cost.
Above $1,000,000	Above $1,000,000	First Project	Maximum Basic Grant for the fiscal year the project was funded AND 50 percent of all remaining costs.
Above $1,000,000	Above $1,000,000	Second and Subsequent Projects or additional projects from a different fiscal year receiving funding.	Fifty percent of the total project cost.

SAB Approval Process

Projects will be presented to the SAB on a continuous basis throughout the fiscal year. The SAB approval/action can either be funded or "unfunded" depending upon the extent of Deferred Maintenance funds available. If the approval is "unfunded" the district will be placed on an "unfunded" list by priority order and complete application received date order. If the critical project receives an "unfunded" approval, the extreme hardship grant will be an estimated amount calculated based on the maximum known at the time of approval and will be recalculated using the maximums available at the time of funding. Once funding becomes available, projects will be funded based on how the application was placed on the "unfunded" list. Only projects that meet the financial test at the time of funding will receive hardship funding. If the request does not meet the criteria, the district may still complete the project with its Basic Grant and State's matching share.

Funding Priorities

Once an application is recieved by the OPSC it is assigned a priority status. The SAB will utilize the following funding prioritization for Extreme Hardship Grants:

Funding Priorities

PRIORITY	DESCRIPTION OF PROJECTS
1	The immediate closure of a facility due to health and safety or structural problems that precludes pupils from remaining in the facility. School board resolution required, refer to Regulation Section 1866.5.3(c).
2	All other eligible deferred maintenance projects, in date order.

Fund Release

After the SAB apportions the Extreme Hardship Grant, the district will need to deposit an amount equal to the maximum Basic Grant into the District Deferred Maintenance Fund and submit the *Fund Release Authorization*, Form SAB 40-23 along with the supporting documentation. This form is due to the OPSC within one year of SAB apportionment of the project. The OPSC will then process fund releases based on the supporting documentation in date received order. The Extreme Hardship Grant may be prorated if the documents submitted only cover a portion of the project.

After the SAB has apportioned the Deferred Maintenance Extreme Hardship Grant, the OPSC will release the amount apportioned to the appropriate county treasury after the district has complied with the requirements of the Fund Release Authorization, Form SAB 40-23, and submitted it to the OPSC. The district must designate the method for the release of funds and submit the required documents with the Fund Release Authorization to release extreme hardship project funds:

Documents Required to Release Funds

DESIGNATED METHOD OF FUND RELEASE	DOCUMENTS REQUIRED
Release of Funds Based on Bids Only	• A copy of the complete bid package including any addenda. • A copy of the proposed contract. • Plans and specifications for the project(s). Approved Division of the State Architect (DSA) plans are needed for those projects that contain work that must be approved by the DSA. • The district certifies that its matching share has been deposited in the District Deferred Maintenance Fund.
Partial Release of Funds	In addition to the above documents: • The district must designate that the documentation submitted represents a request of funds for the entire scope of the project as approved by the SAB or provide the percentage of work under contract or bid and the dollar value for the documents submitted. Percentage of work under contract or bid: _____ % Value of request for release of funds: $ _____
Release of Funds Based on Awarded and Signed Contracts	• A copy of the complete bid package including any addenda. • A copy of the signed and awarded contract. • A summary listing of all the bidders and amount of the bids the district received for the project upon which the contract was awarded. • Plans and specifications for the project(s). Approved DSA plans are needed for those projects that contain work that must be approved by the DSA. • All fully executed change orders. • The district certifies that its matching share has been deposited in the District Deferred Maintenance Fund.

Documents Required to Release Funds...

DESIGNATED METHOD OF FUND RELEASE	DOCUMENTS REQUIRED
Partial Release of Funds	In addition to the above documents: • The district must designate that the documentation submitted represents a request of funds for the entire scope of the project as approved by the SAB or provide the percentage of work under contract or bid and the dollar value for the documents submitted. Percentage of work under contract or bid: _____ % Value of request for release of funds: $ _____

Time Limit on Apportionment and Progress Report

The district has one year from the SAB apportionment of the Extreme Hardship Grant to submit the documents for a release of funds and to complete the project. If within six months of SAB apportionment, the district has not submitted the documents for fund release, a narrative report must be submitted to the OPSC. The report must contain the information requested in Regulation Section 1866.5.8(c). A district may request from the SAB a one-time, time extension from the one year requirement under specific circumstances detailed in Regulation Section 1866.5.8(d).

Project Increases

A district may be eligible for an Extreme Hardship Grant increase to its critical project if the bid or subsequent re-bids are higher than the total estimated cost of the project or additional related work is encountered within the scope of the original project (i.e., change orders). The following documents are required for an increase to a project:

Required Documents for an Increase to a Project

TYPE OF INCREASE	DOCUMENTS REQUIRED TO SUPPORT THE INCREASE
Additional Related Work Note: Only expenditures for work outlined in the application and approved by the SAB will be recognized as eligible.	• An amended Extreme Hardship Funding Application, Form SAB 40-22, reflecting current project costs. • A revised licensed architect/structural engineer's report detailing why the additional work or cost is necessary. • A revised detailed cost estimate from the architect or contractor, which outlines the cost of the work completed under the initial approval, as well as the additional related work and cost necessary to complete the project. • A copy of the low bid and project specifications. • A copy of the signed and awarded contracts. • Copies of all fully executed change orders. • Plot plan showing the location of the work approved under the original application and then identifying the location of the additional related work.
Low Bids exceeds Total Project Cost	• An amended Extreme Hardship Funding Application, Form SAB 40-22, reflecting current project costs. • A revised licensed architect/structural engineer's report detailing why the additional work or cost is necessary. • A copy of the low bid and project specifications. • A copy of the signed and awarded contracts. • Plot plan showing the location of the work included in the bid.

Increases for work that was not originally contained in the scope of the project are not eligible. However, if the work has not been completed, the district may submit a new application for the additional work. The OPSC will review the application to determine the eligibility of the project.

Expenditure Audit

A final audit is initiated when all project expenditures have been made, but no more than one year after the submittal of the Expenditure Report, Form SAB 40-24.[5] This form is due to the OPSC within two years from the date any funds were released for the project. The OPSC shall complete the audit of expenditures within six months, unless awaiting additional documentation from the district.

A worksheet is available to assist the district in providing detailed expenditure information. The *Detailed Listing of Warrants Issued by the District for Deferred Maintenance Hardship Projects*, Form SAB 184ADM, can be found on the OPSC's Web site.

Documents Required For Extreme Hardship Post Audit

The following documents are required for extreme hardship final audit:

Required Documents for Final Audit

DOCUMENT NUMBER	DOCUMENTS NAME
SAB 40-24	Expenditure Report
None	Signed and awarded contract(s)
None	Completion notices(s) showing date recorded
None	All invoices except those paid to the main construction contractor
None	A detailed listing of each expenditure. The district may use the Form SAB 184ADM to assist the district in reporting these expenditures.

Ineligible Extreme Hardship Expenditures

The following are some examples of ineligible extreme hardship expenditures:

- Enhancements. For example, if a district has a shingle roof, which qualifies for replacement, it must be replaced with a shingle roof. If the district wishes to replace it with a metal roof, the State will not fund the project, unless (1) the cost is the same or less than that of a shingle roof or (2) the district agrees to fund the difference between the cost of a shingle roof and the cost of a metal roof. Generally, replacements should be like for like unless prohibited by DSA or by local ordinance.
- Reimbursement of architect/structural engineer's fees more than five months prior to OPSC's acceptance of the complete application.
- Service warranties.
- Equipment rental.
- Work done on buildings not owned by the district.

[5] The one-year audit requirement only applies to projects receiving an apportionment after July 1, 2002.

» Work done on buildings not approved by the Division of the State Architect when appropriate.
» Repairs on portable buildings that exceed 50 percent of the replacement cost. The request may be submitted to the SFP as a modernization project.

Fund Reconciliation and Cost Analysis

When a complete audit of all expenditures reported by the district has been conducted by the OPSC, a "Deferred Maintenance Program Hardship Project Cost Analysis" report will be issued. This report reflects a summary of the total eligible State funded project costs. In addition, any adjustment made to the district's Form SAB 40-24 and Form SAB 184ADM will also appear in this report. During this process, the district is required to review the report and respond to inquires made by the OPSC.

Closing Action/Release of Funds

The project's final closing action consists of one of the following:

Final Closing Actions

IF...	THEN...
the final eligible State funded costs are within the eligible costs authorized by the SAB...	the OPSC closing action will be executed administratively.
the final eligible costs are in excess of the eligible costs authorized by the SAB...	the OPSC closing action will require SAB approval.

Once the final closing action has been completed by the OPSC, additional expenditures will not be recognized.

Release of Funds/Refund

Funds due to the district as a result of the closing action will be released to the district. If the closing action determines that a refund is due to the State, a request will be made to the district for the refund.

This page is intentionally blank.

Section 4

Project Expenditures

Introduction

The governing board of each district shall have complete control over the funds deposited and the earnings of funds once deposited into the District Deferred Maintenance Fund. Expenditures made from this fund must be expended for projects shown on the district's approved five year plan and be eligible deferred maintenance projects.

Legal Requirements

All work must be bid in accordance with the Public Contract Code. All contracts must comply with the Education Code, Government Code, Public Contract Code, California Code of Regulations (Title 24), and any local legal requirements. Please note also that for projects containing work that requires Division of the State Architect (DSA) approval, the final plans and specifications for the project must have DSA approval prior to a district signing a contract for construction. If a district enters into a contract for construction prior to receiving DSA approval of the plans and specifications, State funding may not be provided.

For an emergency contract to be awarded under the provisions of the Public Contract Code, Section 20113, the district must:

- obtain approval from its School Board, by unanimous vote; and,
- obtain approval by the County Superintendent of Schools; and,
- comply with the legal requirements for any bonds or security; and,
- obtain contract approval by legal counsel.

In addition, should the a district enter into an energy services contract (performance agreement) as defined in Government Code Section 4217.10, in order for the OPSC to complete a fund release review the district needs to submit additional documentation as follows:

- A copy of the minutes from the public hearing at which the energy services contract was awarded.
- An opinion from the district's legal counsel verifying that the project is eligible to proceed as an energy services contract as defined in Government Code Section 4217.10 et seq.
- An opinion from the district's legal counsel approving the energy services contract as to form.
- A copy of the DSA approved final plans and specifications for the project.
- A copy of the signed and awarded energy services contract including a description of the scope of the completed extreme hardship project.

Helpful Hint:
If the district bids both the deferred maintenance work and modernization work together be sure to separate the costs for the two types of work so that appropriate costs can be identified at the time of audit.

Deferred Maintenance and Modernization

A district may choose to use both deferred maintenance funding in conjunction with School Facility Program Modernization funds in order to complete a project, provided the work complies with the requirements of deferred maintenance. Depending on the type of Deferred Maintenance funding (Basic Grant or Extreme Hardship Grant) the district will need to comply with the following specific requirements:

- Districts anticipating expenditures of a project being performed in conjunction with a School Facility Program (SFP) modernization project, must have the project on the district's approved Deferred Maintenance Five Year Plan. It is recommended that the district identify in the comments section of the form that a portion of the work will be using SFP modernization grants. In addition, the detail kept on file at the district should be updated to reflect actual projects costs expended from each fund for the purpose of auditing.
- If the district's application for an extreme hardship grant involves proposed work also included in a School Facility Program (SFP) modernization application that has been funded, included on the Modernization Unfunded or Workload List, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project's cost estimate the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, test, inspection or furniture or equipment. If the district cannot make this certification for a funded SFP Modernization application the extreme hardship grant will not be released. If the SFP modernization project is on the Unfunded or Workload List it must be withdrawn prior to the release of the extreme hardship grant to the district.

Professional Services

Architect and structural engineer (A/E) fees shall be allowed as an eligible Basic Grant expenditure under the following conditions:

- An existing system design is faulty and replacement in kind would not alleviate future damage (i.e., a flat roof is redesigned to a sloped system to alleviate recurring leakage and interior damage).
- An obsolete, ineffective system is abandoned due to the district's inability to obtain parts.
- Technological changes prevent portions of the existing system from being used in conjunction with the replacement system and design changes are necessary to accommodate the new system.
- The Division of the State Architect, Office of Regulation Services (DSA/ORS), requires structural changes.

Extreme Hardship: Architect/Structural Engineer

As part of the application requirements of an Extreme Hardship Grant, the district must retain the services of a licensed architect or structural engineer (A/E). The combined compensation for A/E service fees are limited to a maximum of 12 percent of the construction cost when those costs do not exceed $500,000. If the construction costs exceed $500,000, the allowable A/E fees will be calculated based on the sliding scale outlined in Appendix 4, Architect/Structural Engineer Fee Schedule, page 25. For purposes of calculating the A/E service fees, the computed cost is the total award from construction contracts, plus the cost of all approved additive contract change orders (with the exception of items resulting from errors and omissions on the part of the architect). Although these allowances are eligible, the district is encouraged to negotiate the best possible terms for all professional services.

Force Account Labor

Force account labor may be recognized as an eligible deferred maintenance expenditure under the following conditions:

- The personnel was hired on a temporary basis to do work solely listed on the SAB approved Five Year Plan, Form SAB 40-20.

A district may not reimburse its general fund with deferred maintenance funds by charging labor from a deferred maintenance project done by regular district employees. Charges for materials may be recognized as long as they are not items classified as supplies in the School Accounting Manual.

This page is intentionally blank.

Appendix 1
Typical School Facilities Components

The following chart provides examples of deferred maintenance projects under each eligible project category. Please note, this is not a complete listing of all eligible projects and other projects may qualify as an eligible expenditure under one of the following school building components. The work must be like-kind components or materials unless the district can demonstrate that an alternative building material or system performs the same function as the existing materials or system, the existing materials are obsolete or no longer available, or the proposed replacement materials are more cost effective or economical than like-kind materials. Please refer to Regulation Section 1866.5.

Typical School Facilities Components

SCHOOL FACILITY COMPONENT	CONDITIONS
Floor Covering: 1. Carpeting 2. Asphalt Tile and Vinyl Asbestos Tile 3. Hardwood Floors	
Painting: 1. Interior of classrooms, library, offices, hallways, cafeteria, restrooms, etc. 2. Exterior stucco, masonry, wood, and metal trim	
Electrical: 1. Panels and boards 2. Signal systems, including fire alarms and public address 3. Conductors and cables	Must be connected to the main bell system; cannot be free standing.
Classroom Lighting: 1. Substandard incandescent lighting and obsolete fluorescent lighting 2. Fixtures	Light bulb replacement not allowed.
Roofing: 1. Large sections or whole buildings of roofing systems 2. Flashings, gutters, and downspouts 3. Ceiling tiles	Replacement of roofing systems must be for like kind material, pitch, etc.
Plumbing: 1. Piping within boundaries 2. Underground gas, water 3. Sewer, leech fields 4. Well replacement	

continued on following page...

Typical School Facilities Components...

SCHOOL FACILITY COMPONENT	CONDITIONS
Heating/Ventilation/Air-Conditioning: 1. Heating a. Gas-fired unvented wall heaters b. Other heating systems i. Boilers ii. Piping c. Individual heating units except gas-fired wall heaters 2. Ventilation and Air-Conditioning Systems a. Central systems b. Individual units c. Cafeteria and automotive fume exhaust systems	
Wall Systems: 1. Doors including hardware 2. Window Assemblies (including wood sash) 3. Indoor gym bleachers that pull out from wall 4. Siding 5. Restroom partitions (attached to wall)	
Paving: 1. Asphalt a. Slurry coat b. Seal 2. Concrete	Like kind replacement only
Underground Toxic Tank: 1. Removal 2. Clean-up	May include ground water monitoring costs if required by public agency
Asbestos: 1. Inspection, sampling, and analysis 2. Removal or encapsulation	When friable
Lead: 1. Inspection, sampling, and analysis 2. Removal or control management	When present in lead containing materials.

Appendix 2
Frequently Asked Questions

Q. **How may I obtain current information and forms for the Deferred Maintenance Program?**

On our Web site at www.opsc.dgs.ca.gov; or, by contacting your Deferred Maintenance Program Project Manager at 916.445.3160.

Q. **Can interest earned by a district be used as part of the district deposit in subsequent years?**

If the district does not have a critical project, one-half of the interest amount may be applied toward the district deposit. However, if it does have a critical project, the full amount of interest earnings must be applied to the Extreme Hardship Grant or returned to the State.

Q. **Will my deferred maintenance project require DSA approval?**

The district should contact the DSA for guidance. For projects that contains work that requires Division of the State Architect (DSA) approval, the final plans and specifications for the project must have DSA approval prior to a district signing a contract for construction. If a district enters into a contract for construction prior to receiving DSA approval of the plans and specifications, State funding may not be provided.

Q. **On our Five-Year Plan (Form SAB 40-20), can the following items be included: 1) asbestos inspection, 2) door hardware, and 3) carpets?**

1. Asbestos inspection: Yes, to determine the presence of asbestos except for in the case of annual testing. Routine asbestos inspections generally deemed an administrative cost.

2. Door hardware: Yes, it may be included in the category of "wall systems".

3. Carpets: Yes, it may be included in the category of "floor covering".

Q. **Does the district have to bid the project if an emergency situation occurs?**

For an "emergency" contract to be awarded under the provisions of the Public Contract Code, Section 20113, the district must:

- obtain approval from its School Board, by unanimous vote; and,
- obtain approval by the County Superintendent of Schools; and,
- comply with the legal requirements for any bonds or security; and,
- obtain contract approval by legal counsel.

Q. **How can I find out if my repair projects qualify for Deferred Maintenance?**

Pages 19 and 20 of this handbook give examples of which projects are eligible for Deferred Maintenance. If you don't find your project listed on these pages, please contact a Deferred Maintenance Project Manager for assistance.

Q. **Why does my second hardship project have to be twice the Basic Apportionment amount?**

Every project must meet the financial and health and safety "test" to be considered a viable hardship project as required in Regulation Section 1866.5.

Q. **Is there a "cap" or limit to the cost of a project?**

There is no limit to the cost of a project. However, in addition to contributing the district's maximum basic grant funds and State matching funds to the project, the district must also fund 50 percent of any amount over $1,000,000.

Q. **When will the district receive the funds for its hardship project that was approved by the SAB at the December Board meeting?**

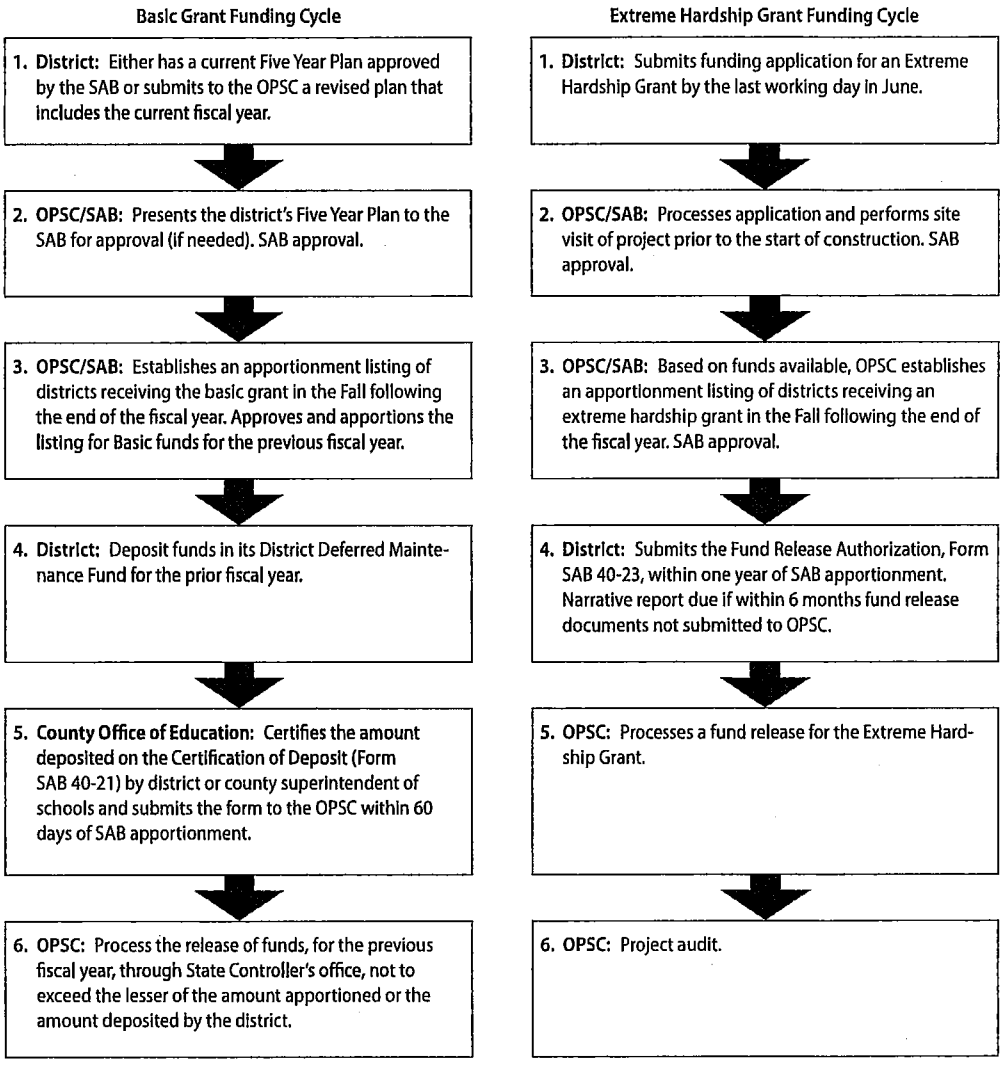
Once the project has been approved by the SAB for funding, the district may submit a Fund Release Authorization, Form SAB 40-23, to the OPSC to release the funds. The district must also be able to demonstrate that the project has been competitively bid and that a contract has been signed for the work to be performed, showing the actual amount of the bids and the contract awarded, to receive these funds.

Q. **Why are the basic apportionment funds held by OPSC until the Hardship Fund Release Authorization is submitted by the district?**

The district must use its entire deferred maintenance basic apportionment funds for their first (yearly) hardship project. If the total project costs are more than two times the basic apportionment, the amount over the basic and State match is considered the hardship portion of the project, and is therefore funded out of Deferred Maintenance Hardship funds.

Appendix 3
Grant Cycles, Forms and Filing Deadlines

Grant Cycles



Program Forms and Filing Deadlines

FORM	FORM SUBMITTAL DEADLINES
Five Year Plan, Form SAB 40-20	Last working day in June for the current fiscal year.
Certification of Deposits, Form SAB 40-21	Sixty days from SAB apportionment of the Basic Grant.
Extreme Hardship Funding Application, Form SAB 40-22	Last working day in June for the current fiscal year.
Fund Release Authorization, Form SAB 40-23	Within one year from SAB apportionment of Extreme Hardship Grant.
Expenditure Report, Form SAB 40-24	Within two years from the date any funds were released.

Appendix 3

Architect/Structural Engineer Fee Schedule

(Extreme Hardship Only)

The following schedule is used to determine the maximum reimbursable architect or structural engineer fees allowed by the SAB. The rates below are applied to the amount of the project construction contract including change orders.

Maximum Reimbursable Architect Fees

AMOUNT OF THE CONSTRUCTION CONTRACT	MAXIMUM PERCENTAGE
First $500,000	12%
Next $500,000	11½%
Next $1,000,000	11%
Next $4,000,000	10%
Over $6,000,000	9%

This page is intentionally blank.

Appendix 5
Applicable Education Code Sections

California Education Code

SECTION	DESCRIPTION
17582	Provides provisions for the establishment of the District Deferred Maintenance Fund (DDMF) and subsequent expenditures.
17583	Allows for the transfer of excess local funds from the DDMF.
17584	Establishes the calculation method for the Deferred Maintenance Maximum Basic Grant as calculated by the California Department of Education.
17584.1	Sets criteria that the district's Five Year Plan be discussed in a public hearing at a regularly scheduled school board meeting and set reporting requirements for districts that do not set aside the Maximum Basic Grant as calculated pursuant to EC Section 17584.
17585	Establishes guidelines for school districts to receive an additional apportionment from the State, if funds are available for projects listed on their Five Year Plan.
17587	Establishes application and funding criteria for districts that are eligible for an Extreme Hardship Grant.
17588	Establishes the method for determining an Extreme Hardship Grant.
17591	Establishes guidelines for districts regarding the filing and approval of the Five Year Plan.
17592.5	Provides the authority to allocate deferred maintenance funds for two regional occupational centers.

This page is intentionally blank.

Appendix 6

Ineligible Deferred Maintenance Expenditures

Allowable expenditures consist of major repair or replacement of existing school building components. The following are examples of ineligible deferred maintenance expenditures:

- Projects not included on the SAB approved Five Year Plan
- Projects being performed solely to bring the facility component up to current code
- Repair and maintenance of furniture and equipment (e.g., kitchen equipment, office and movable desks)
- Ongoing preventative maintenance (e.g., periodic inspection and cleaning, replacement of bulbs and minor repairs, individual floor tiles, individual ceiling tiles, etc.)
- Installation of new items that did not previously exist
- Consultant or project management fees
- Energy conservation
- Landscaping, fencing, irrigation, and sprinkler systems
- Athletic stadium equipment (bleachers, score boards, etc.)
- Window curtains and blinds, stage curtains, or black out curtains
- Tables and counter tops (unless permanently attached to a wall)
- Whiteboards, chalkboards, and blackboards
- Playground equipment
- Replacement of portable buildings
- Maintenance or repair of swimming pools
- Administrative Costs
- Technology and telephone cables, panels, and wiring

Please be advised that the above listing is only a sample of ineligible projects and does not encompass all the ineligible expenditures concerning the Deferred Maintenance Program.

California
PRIMARY ELECTION
Tuesday, March 2, 2004

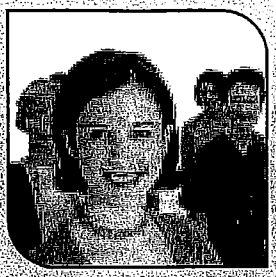
CERTIFICATE OF CORRECTNESS

I, Kevin Shelley, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the Primary Election to be held throughout the State on March 2, 2004, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 8th day of December, 2003.

Kevin Shelley

Kevin Shelley
Secretary of State







Official Voter Information Guide

SECRETARY OF STATE

Dear Fellow Voter,

When we cast our votes, we shape the future of our state.

But like you, I want to make sure that I have as much information as possible before I make such an important decision. I know that it can be very difficult to find information on the candidates and on the election process.

That's why I have created a new voter information source at www.MyVoteCounts.org.

This website contains vital information on the upcoming election and links to important sources where you can learn more about the candidates and issues. I hope you will visit www.MyVoteCounts.org and use the site as a resource before you vote.

myVOTE
COUNTS
www.MyVoteCounts.org

CONTENTS

VOTER BILL OF RIGHTS

1. You have the right to cast a ballot if you are a valid registered voter.
   A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
2. You have the right to cast a provisional ballot if your name is not listed on the voting rolls.
3. You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.
4. You have the right to cast a secret ballot free from intimidation.
5. You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.
   If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on Election Day.
6. You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.
7. You have the right to return a completed absentee ballot to any precinct in the county.
8. You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.
9. You have the right to ask questions about election procedures and observe the elections process.
   You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.
10. You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

If you believe you have been denied any of these rights, or if you are aware of any election fraud or misconduct, please call the Secretary of State's confidential toll-free

VOTER PROTECTION HOTLINE

1-800-345-VOTE (8683)

Secretary of State | State of California

PROP 55 Kindergarten–University Public Education Facilities Bond Act of 2004.

Bond Act
Put on the Ballot by the Legislature

Summary

This twelve billion three hundred million dollar ($12,300,000,000) bond issue will provide funding for necessary education facilities to relieve overcrowding and to repair older schools. Funds will be targeted to areas of the greatest need and must be spent according to strict accountability measures. Funds will also be used to upgrade and build new classrooms in the California Community Colleges, the California State University, and the University of California, to provide adequate higher education facilities to accommodate the growing student enrollment. These bonds may be used only for eligible projects. Fiscal Impact: State costs of about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion) costs on the bonds. Payments of about $823 million per year.

What Your Vote Means

Yes

A **YES** vote on this measure means: The state could sell $12.3 billion in general obligation bonds for the construction and renovation of public education facilities (kindergarten through college).

No

A **NO** vote on this measure means: The state could not sell $12.3 billion in general obligation bonds for these purposes.

Arguments

Pro

Provide kids with clean, safe classrooms to improve student learning. Prop. 55 will FIX RUNDOWN CLASSROOMS and BUILD NEW SCHOOLS. STRICT ACCOUNTABILITY and AUDITS guard against waste and mismanagement. California Teachers Association, California Taxpayers' Association, State PTA, California Chamber of Commerce: "Invest in kids and their future. Yes on 55."

Con

California faces the worst financial crisis in its history. We need new schools, not more debt for taxpayers. Proposition 55 is fundamentally flawed, poorly drafted, and grossly unfair. It favors Los Angeles Unified School District at the expense of the rest of the state and it will raise our taxes.

For Additional Information

For

Yes on 55—Californians for Accountability and Better Schools
1121 L Street, Suite 803
Sacramento, CA 95814
888-563-0055
information@yeson55.com
www.Yeson55.com

Against

Thomas N. Hudson, Executive Director
California Taxpayer Protection Committee
9971 Baseline Road
Elverta, CA 95626-9411
916-991-9300
Fax: 209-254-5466
taxfighters@yahoo.com
www.ProtectTaxpayers.com

PROP 56 State Budget, Related Taxes, and Reserve. Voting Requirements. Penalties. Initiative Constitutional Amendment and Statute.

Put on the Ballot by Petition Signatures

Summary

Permits enactment of budget and budget-related tax/appropriation bills with 55% vote. Legislature, Governor forfeit compensation each day budget is late. Fiscal Impact: Varying impacts from lowering the vote requirement for budget-related measures—including changes in spending and potentially significant increases in state tax revenues in some years. Impacts would depend on the composition and actions of future Legislatures.

What Your Vote Means

Yes

A **YES** vote on this measure means: The Legislature could pass the state budget and tax increase measures related to the budget by a 55 percent vote. Other changes to the budget process would be made.

No

A **NO** vote on this measure means: The state budget and tax increase measures would continue to require a two-thirds vote for passage. The budget process would remain the same.

Arguments

Pro

Proposition 56 is real budget reform. It holds legislators accountable by withholding their pay when the budget is late, informing voters of how their money is spent, lowering the threshold to pass a budget from 2/3 to 55%, and requiring a real "rainy day" fund to help balance the budget.

Con

Prop. 56 *masquerades* as accountability, but actually *eliminates the 2/3 legislative vote needed before politicians can increase taxes.* If Prop. 56 passes, expect HIGHER CAR TAXES, GAS TAXES, INCOME TAXES, SALES TAXES, TAXES on HOMEOWNERS. Don't give Sacramento a *BLANK CHECK.* California Taxpayers' Association recommends: *NO, NO, NO on 56!*

For Additional Information

For

Yes on Prop 56
1510 J Street, #210
Sacramento, CA 95814
916-443-7817
www.budgetaccountabilitynow.org

Against

Californians Against Higher Taxes—No on 56, a coalition of Taxpayers, Consumers, Businesses, Retailers
11300 West Olympic Blvd., Suite 840
Los Angeles, CA 90064
310-996-2678
info@NoBlankChecks.com
www.NoBlankChecks.com

PROPOSITION 55

Kindergarten–University Public Education Facilities Bond Act of 2004.

OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

Kindergarten–University Public Education Facilities Bond Act of 2004.

- This act provides for a bond issue of twelve billion three hundred million dollars ($12,300,000,000) to fund necessary education facilities to relieve overcrowding and to repair older schools.
- Funds will be targeted to areas of greatest need and must be spent according to strict accountability measures.
- Funds will also be used to upgrade and build new classrooms in the California Community Colleges, the California State University, and the University of California, to provide adequate higher education facilities to accommodate growing student enrollment.
- Appropriates money from General Fund to pay off bonds.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State costs of about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion) costs on the bonds. Payments of about $823 million per year.

Final Votes Cast by the Legislature on AB 16 (Proposition 55)

Assembly:	Ayes 71	Noes 8
Senate:	Ayes 27	Noes 11

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

to property owners in the special district. Statewide, school districts have received on average about $270 million a year in special local bond proceeds over the past ten years.

K–12 School Building Needs. Under the SFP, K–12 school districts must demonstrate the need for new or modernized facilities. Through September 2004, the districts have identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. The state cost to address these needs is estimated to be roughly $16 billion.

Higher Education

California's system of public higher education includes 141 campuses in the three segments listed below, serving about 1.6 million students:

- The CCCs provide instruction to 1.1 million students at 108 campuses operated by 72 locally governed districts throughout the state. The community colleges grant associate degrees and also offer a variety of vocational skill courses.
- The CSU has 23 campuses, with an enrollment of about 331,000 students. The system grants bachelor and master degrees, and a small number of joint doctoral degrees with UC.
- The UC has nine general campuses, one health sciences campus, and various affiliated institutions, with a total enrollment of about 201,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for conducting research.

Over the past decade, the voters have approved $5.1 billion in general obligation bonds for capital improvements at public higher education campuses. Virtually all of these funds have been committed to specific projects. The state also has provided almost $1.6 billion in lease revenue bonds (authorized by the Legislature) for this same purpose.

In addition to these state bonds, the higher education segments have other sources of funding for capital projects.

FIGURE 1

PROPOSITION 55
USES OF BOND FUNDS

	Amount (In Millions)
K–12	
New construction projects	$5,260[a]
Modernization projects	2,250
Critically overcrowded schools	2,440
Joint use	50
Subtotal, K–12	($10,000)[b]
Higher Education	
Community Colleges	$920
California State University	690
University of California	690
Subtotal, Higher Education	($2,300)
TOTAL	**$12,300**

[a] Up to $300 million available for charter schools.
[b] Up to $20 million available for energy conservation projects.

- ***Local General Obligation Bonds.*** Community college districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last decade, community college districts have received local voter approval to issue over $7 billion of bonds for construction and renovation of facilities.
- ***Gifts and Grants.*** The CSU and UC in recent years together have received on average over $100 million annually in gifts and grants for construction of facilities.
- ***UC Research Revenue.*** The UC finances the construction of new research facilities by selling bonds and pledging future research revenue for their repayment. Currently, UC uses about $130 million a year of research revenue to pay off these bonds.

Higher Education Building Plans. Each year the institutions of higher education prepare capital outlay plans in which they identify project priorities over the next few years. Higher education capital

ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

outlay projects in the most recent plans total $5.3 billion for the period 2003–04 through 2007–08.

Proposal

This measure allows the state to issue $12.3 billion of general obligation bonds for construction and renovation of K–12 school facilities ($10 billion) and higher education facilities ($2.3 billion). Figure 1 shows how these bond funds would be allocated to K–12 and higher education.

Future Education Bond Act. If the voters do not approve this measure, state law requires the same bond issue to be placed on the November 2004 ballot.

K–12 School Facilities

Figure 1 describes generally how the $10 billion for K–12 school projects would be allocated. However, the measure would permit changes in this allocation with the approval of the Legislature and Governor.

New Construction. A total of $5.26 billion would be available to buy land and construct *new* school buildings. A district would be required to pay for 50 percent of costs with local resources unless it qualifies for state hardship funding. The measure also provides that up to $300 million of these new construction funds is available for charter school facilities. (Charter schools are public schools that operate independently of many of the requirements of regular public schools.)

Modernization. The proposition makes $2.25 billion available for the reconstruction or modernization of *existing* school facilities. Districts would be required to pay 40 percent of project costs from local resources.

Critically Overcrowded Schools. This proposition directs a total of $2.44 billion to districts with schools which are considered critically overcrowded. These funds would go to schools that have a large number of pupils relative to the size of the school site.

Joint-Use Projects. The measure makes a total of $50 million available to fund joint-use projects. (An example of a joint-use project is a facility constructed for use by both a K–12 school district and a local library district.)

Higher Education Facilities

The measure includes $2.3 billion to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings for California's public higher education systems. As Figure 1 shows, the measure allocates $690 million each to UC and CSU and $920 million to CCCs. The Governor and the Legislature would select the specific projects to be funded by the bond monies.

Fiscal Effect

The cost of these bonds would depend on their interest rates and the time period over which they are repaid. If the $12.3 billion in bonds authorized by this proposition is sold at an interest rate of 5.25 percent (the current rate for this type of bond) and repaid over 30 years, the cost over the period would be about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion). The average payment for principal and interest would be about $823 million per year.

For text of Proposition 55 see page 23.

ARGUMENT in Favor of Proposition 55

Our kids deserve clean, safe classrooms if we expect them to succeed. But many students are asked to learn in classrooms that are rundown and overcrowded.

California needs to invest in education to invest in the future of our children. Fixing rundown classrooms and building new schools to reduce overcrowding is one way to help students improve test scores and meet higher standards.

Passing Proposition 55 will invest in our kids' future and enact strict accountability standards that make sure school bond funds go directly to repair and build new classrooms where they're most needed.

PARENTS SUPPORT Proposition 55 because it FIXES OLD AND OUTDATED CLASSROOMS in need of repair.

Recent surveys show that one million children attend schools with bathrooms that don't work. Our kids deserve better. Prop. 55:

- FIXES LEAKY ROOFS, REPAIRS BROKEN BATHROOMS, and puts heating and air conditioning in classrooms.
- Helps make sure kids go to school in SAFE BUILDINGS that meet earthquake and fire standards.

LOCAL TEACHERS SUPPORT Proposition 55 because it PROVIDES COMMUNITIES MATCHING STATE FUNDS TO BUILD NEW LOCAL SCHOOLS.

California needs to build more than 22,000 classrooms to relieve overcrowding and deal with increasing student enrollment. Proposition 55 provides matching state funds for local school projects and will:

- BUILD NEW LOCAL SCHOOLS up and down the state.
- BUILD NEW CLASSROOMS to relieve overcrowding and reduce class sizes.

The CALIFORNIA TAXPAYERS' ASSOCIATION supports Proposition 55's STRICT ACCOUNTABILITY PROVISIONS.

- INDEPENDENT AUDITS, COST CONTROLS and other accountability requirements guard against waste and mismanagement and provide oversight of ALL school projects.
- Funds can only be spent to repair or build schools, NOT on bureaucracy or waste.

The CALIFORNIA STATE PTA supports Proposition 55 because it TARGETS FUNDS WHERE THEY'RE NEEDED MOST.

- Prop. 55 provides specific funding to build *new schools in areas where classrooms are severely overcrowded.*
- New and growing communities also receive their *fair share* to build the schools and classrooms they need.

The CALIFORNIA STATE UNIVERSITY, California COMMUNITY COLLEGES and UNIVERSITY OF CALIFORNIA support Proposition 55.

- Proposition 55 provides funds for colleges and universities to build classrooms and modernize research facilities that help create jobs and grow California's economy.

The CALIFORNIA CHAMBER OF COMMERCE supports Proposition 55 because it INVESTS IN OUR ECONOMY AND OUR FUTURE WORKFORCE.

- School construction is a direct investment in the economy. Proposition 55 projects will CREATE HUNDREDS OF THOUSANDS OF NEW JOBS throughout California.
- Prop. 55 provides money to *wire classrooms* and give students the tools they need to become tomorrow's leaders.

Passing Proposition 55 will invest in our kids' future by fixing rundown classrooms and building new schools. Strict accountability requirements ensure funds are spent only on school repair and construction.

And Prop. 55 is a general obligation bond that WILL NOT RAISE TAXES.

Join Republicans, Democrats and Independents, local teachers, taxpayer organizations, community groups, local businesses, the California Chamber of Commerce, California State PTA and millions of Californians who support our schools.

VOTE YES ON PROPOSITION 55.

BARBARA KERR, *President*
California Teachers Association

LARRY McCARTHY, *President*
California Taxpayers' Association

BILL HAUCK, *Co-Chair*
Californians for Accountability and Better Schools

REBUTTAL to Argument in Favor of Proposition 55

We need to make school construction a priority for California—without increasing our debt.

The proponents' ridiculous claim that this bond "will not raise taxes" is a preposterous misrepresentation. Bond funds can only be repaid with tax dollars. We must either cut services or increase taxes to repay this bond.

Fortunately, there is a better way to build schools. This year, the state spent $3,542,000,000 for school construction (equivalent to 3.5% of the state's $101,174,000,000 budget). If we spent just 5% of the next five budgets on school construction, we would raise TWICE as much money as this bond. We could build twice as many schools and save taxpayers more than $12 billion in interest!

We don't need new debt or higher taxes. We just need to tell Sacramento to make school construction a priority.

Proponents claim that funds from Proposition 55 "can only be spent to repair or build schools, NOT on bureaucracy or waste." This is nonsense. School construction in California is plagued by waste, bureaucracy, and ridiculous government mandates. This bond does nothing to eliminate bureaucracy, waste or mandates.

The proponents promise to build schools "up and down the state," but they don't mention that the money will only be spent in districts wealthy enough to raise the 40% matching funds. HALF OF ALL SCHOOL DISTRICTS RECEIVED NOTHING FROM THE LAST SCHOOL BOND. There is no guarantee that your school district will receive a penny from this bond, but you will be forced to pay it back.

RICO OLLER, *State Senator*
First Senate District

LEW UHLER, *President*
National Tax-Limitation Committee

HENRY A. HOUGH, *Senior Vice President*
60-Plus Association

ARGUMENT Against Proposition 55

California is facing the most severe financial crisis in the history of any state. Last year, California's budget deficit nearly equaled the *combined* deficits of all other states. Our state's credit rating is the very worst in the nation and our bonds are slipping toward "junk bond" status. To make matters worse, former Governor Davis and the Legislature borrowed more than $13 billion last year just to pay the bills. Next year's estimated budget deficit is already over $10 billion and the bad news keeps coming. We are in such dire fiscal straits that the Treasurer has not been able to issue $28 billion of the $73 billion in statewide bonds that have already been approved.

The results of this financial mismanagement are staggering. For decades, we will be forced to pay higher taxes just to pay back what we have already borrowed. Even without new bonds, our crippling debt load will make it much more difficult for government to respond to natural disasters and recessions. Today's schoolchildren will still be paying for this bond long after their own children have graduated!

At a time when Governor Schwarzenegger and the Legislature struggle to find ways to pay for the $73,000,000,000 in previously approved debt, this measure would dig us deeper into a financial hole. At $12,300,000,000, Proposition 55 rivals the largest bond in the history of any American state. We simply cannot afford it.

It is time for us to take a new look at the way we build schools in California. The effect of compound interest and the fees paid to lawyers, Wall Street bond traders, and bureaucrats generally doubles the cost of facilities built with bonds. This bond does not even contain an interest rate cap, so the true costs could be much higher, especially if California voters approve additional bonds in this election. WE COULD BUILD MANY MORE SCHOOLS IF WE ADOPTED A MORE FISCALLY RESPONSIBLE APPROACH. Since California has thousands and thousands of public schools, why not simply build and renovate some number each year? That way, we wouldn't need to go into debt or threaten our financial stability. We just need to impress upon Sacramento that school construction is a priority.

Before voting, please take a close look at the bond's language. The drafters cleverly set aside more than a quarter of the bond funds for the Los Angeles Unified School District. Only 12% of our state's schoolchildren attend school there. This isn't fair and it isn't right.

To add insult to injury, Proposition 55 requires local school districts to provide 40% matching funds to receive ANY money. Does your school district have a huge budget surplus? Unless you live in a wealthy community with surplus cash for the required 40% matching funds, you and your children may never see a penny from this $12,300,000,000 bond, but you will certainly be required to pay higher taxes to pay back the money for the next 30 years.

Please VOTE NO on Proposition 55.

SENATOR RICO OLLER
First Senate District

REBUTTAL to Argument Against Proposition 55

California can and must continue to invest in education and our kids' future. Proposition 55 will do just that. Don't be fooled by the opponent's distortion of the facts.

Providing safe, clean classrooms will improve student performance and help our children succeed.

CALIFORNIA STATE TREASURER Phil Angelides says, *"California's economy is capable of supporting Proposition 55. It's a sound, prudent investment that will contribute to our future economic prosperity."*

THE CALIFORNIA TAXPAYERS' ASSOCIATION says, *"Proposition 55 is a fiscally responsible way to finance school repair and construction."*

The opponent DELIBERATELY MISREPRESENTED the facts. The truth:

- Every district is eligible for only its FAIR SHARE of Prop. 55 based on need. No district, in Los Angeles or elsewhere, will get more than its fair share.
- Proposition 55 TARGETS FUNDS where they're needed most—districts with critically overcrowded and rundown schools. Visit *www.Yeson55.com* for a list of Prop. 55 projects and projects financed by the last statewide school bond.
- STRICT ACCOUNTABILITY requirements, COST CONTROLS and independent AUDITS safeguard against waste and mismanagement.
- Proposition 55 provides matching funding to local districts. Without Prop. 55, many communities *cannot* move forward with school repair and construction.
- Proposition 55 is a general obligation bond that WILL NOT RAISE TAXES.

California needs to build 22,000 classrooms to deal with overcrowding and increasing enrollment. Tens of thousands of schools need basic repairs—fixing leaky roofs and broken bathrooms, installing heating and air conditioning.

Vote YES on 55 to FIX RUNDOWN SCHOOLS, build NEW CLASSROOMS and IMPROVE STUDENT LEARNING.

CARLA NIÑO, *President*
California State PTA

ALLAN ZAREMBERG, *President*
California Chamber of Commerce

CATHERINE L. UNGER, *President*
Board of Governors, California Community Colleges

HState Compensation Ins. Fund v. W.C.A.B.
Cal.App.2.Dist.
STATE COMPENSATION INSURANCE FUND, Petitioner,
v.
WORKERS' COMPENSATION APPEALS BOARD and SAM WELCHER, Respondents.
No. B086372.

Court of Appeal, Second District, Division 3, California.
Aug 8, 1995.

SUMMARY

A workers' compensation judge found that Lab. Code, § 5402 (failure to reject liability for workers' compensation injury claim within 90 days after filing of claim creates presumption that injury is compensable; presumption is rebuttable only by evidence discovered subsequent to 90-day period), barred evidence offered by a workers' compensation insurer concerning its admitted noncompliance with the statute and determined that an applicant was 100 percent permanently disabled due to industrial injury. The Workers' Compensation Appeals Board denied the insurer's petition for reconsideration.

The Court of Appeal affirmed the order denying reconsideration, holding that the Workers' Compensation Appeals Board correctly upheld the ruling of the workers' compensation judge. Once the statutory presumption attached due to the insurer's failure to respond to the applicant's timely claim within 90 days, the insurer had the burden of proof on the primary issue of causation. The insurer offered four medical reports to show that the applicant's diseases were not work related, but they had not been obtained during the 90-day statutory period. The presumption operates to bar the presentation of evidence which could have been obtained with the exercise of reasonable diligence and all of the records could have reasonably been obtained within the 90-day period. Thus, the insurer never established that it had exercised reasonable diligence in investigating the claim. Further, the workers' compensation judge properly excluded the testimony of the insurer's claims adjuster as to when the claim had been rejected, pursuant to Lab. Code, § 5502, subd. (d)(3), since she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement, and no explanation had been given at trial for the failure to so identify her. (Opinion by Klein, P. J., with Croskey and Aldrich, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Statutes § 21--Construction--Legislative Intent--Purpose of Law.
A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. When the meaning of a statute is uncertain, resort may be had to the history of the legislation, including legislative and other reports, to resolve such ambiguities as exist.

(2a, 2b) Workers' Compensation § 67--Proceedings Before Workers' Compensation Appeals Board--Claims--Failure to Reject Claim of Injury Within Specified Time as Creating Presumption of Compensability--Statutory Purpose-- Presumption as Affecting Burden of Proof.
The purpose of the 1989 amendment to Lab. Code, § 5402, providing that failure to reject liability for a workers' compensation injury claim within 90 days after the filing of the claim creates a rebuttable presumption that the injury is compensable, was to expedite the entire claims process in workers' compensation cases by limiting the time during which the employer's investigation of an injured worker's claim could be undertaken-90 days-without being penalized for delay. The rebuttable presumption of § 5402 was intended to affect the burden of proof rather than the burden of producing evidence, because it was created by the Legislature to implement the public policy of expediting workers' compensation claims. As such, once the underlying facts have been established, the statute's effect in workers' compensation litigation is to place on the defendant employer/carrier the burden of proving that the employee/applicant does not have a compensable injury; in the absence of such proof, the consequences are adverse to the employer/carrier.
[See 2 **Witkin,** Summary of Cal. Law (9th ed. 1987)

Workers' Compensation, § 380.]
(3) Evidence § 20--Presumptions--Affecting Burden of Proof--As Implementing Public Policy.
While a presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof is established to implement some public policy other than to facilitate the particular action in which it applies.

(4a, 4b) Workers' Compensation § 67--Proceedings Before Workers' Compensation Appeals Board--Claims--Failure to Reject Claim of Injury Within Specified Time as Creating Presumption of Compensability--Admissibility of Evidence to Rebut Presumption.
The Workers' Compensation Appeals Board correctly upheld the rulings of a workers' compensation judge that Lab. Code, § 5402 (failure to reject liability for workers' compensation injury claim within 90 days after filing of claim creates presumption that injury is compensable; presumption is rebuttable only by evidence discovered subsequent to 90-day period), barred evidence offered by a workers' compensation insurer concerning its admitted noncompliance with the statute and that the applicant was disabled due to industrial injury. Once the presumption attached due to the insurer's failure to respond to the applicant's timely claim within 90 days, the insurer had the burden of proof on the primary issue of causation. The insurer offered four medical reports to show that the applicant's diseases were not work related, but they had not been obtained during the 90-day statutory period. The presumption operates to bar the presentation of evidence which could have been obtained with the exercise of reasonable diligence and all of the records could have reasonably been obtained in the 90-day period. Thus, the insurer never established that it had exercised reasonable diligence in investigating the claim. Further, the workers' compensation judge properly excluded the testimony of the insurer's claims adjuster as to when the claim had been rejected, pursuant to Lab. Code, § 5502, subd. (d)(3), since she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement, and no explanation had been given at trial for the failure to so identify her.

(5) Statutes § 44--Construction--Aids--Contemporaneous Administrative Construction.
Contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight, and courts will not depart from such construction unless it is clearly erroneous or unauthorized.

COUNSEL
Krimen, Klein, Da Silva, Daneri & Bloom and Don E. Clark for Petitioner.
Dennis J. O'Sullivan and David D. Robin for Respondents. *678

KLEIN, P. J.

A workers' compensation judge (WCJ), applying the rebuttable presumption of compensability provided in Labor Code section 5402, [FN1] barred evidence offered by defendant State Compensation Insurance Fund (SCIF) concerning its admitted noncompliance with the statute and determined that an applicant was 100 percent permanently disabled due to industrial injury. SCIF petitioned for reconsideration, and the Workers' Compensation Appeals Board (Board) denied reconsideration, upholding the WCJ. SCIF sought review in this court, contending that the WCJ had erred in finding applicant's injuries compensable in view of the extensive medical record demonstrating nonindustrial causation. Both the applicant and applicant's health care provider (Kaiser Permanente, The 4600 Group, referred to herein as Kaiser) answered the petition, contending that failure to apply Labor Code section 5402 in this instance would render the legislation, enacted as part of Legislature's effort in 1989 and 1990 to reform the workers' compensation system, meaningless. We agree, and affirm the determination of the Board.

FN1 The statute provides as follows: "Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400. If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption is rebuttable only by evidence discovered subsequent to the 90-day period."

Facts and Procedural History

Applicant Sam Welcher, born June 25, 1930, worked from January 1965 to February 26, 1991, first as a truck driver and then a dispatcher, for defendant employer Cook & Cooley, insured by defendant SCIF. Applicant left the job because he was no longer able to work due to health problems, and in March 1991 underwent major aortic bypass surgery at Kaiser during which a kidney was removed and some toes were amputated. Applicant, suffering from renal failure, receives dialysis frequently, and the medical expenses in this case are large. [FN2] He filed his claim for workers' compensation benefits on August 30, 1991, alleging an industrial continuous trauma injury to his kidneys, right lower leg, to his internal system, to his heart and psyche, and that he had industrially caused hypertension as well.

FN2 At trial, Kaiser submitted a lien claim of $277,902.17, not a final lien.

SCIF did not deny liability in this case until January 2, 1992, almost four months after the date of knowledge of the injury, which constituted noncompliance with Labor Code section 5402. ***679**

At trial, applicant testified that during his daily employment as a radio dispatcher, he was often awakened in the night by calls concerning gasoline deliveries. He was in effect always "on call." Applicant missed very little time from work until he became sick in February 1991. Applicant felt stress on the job caused his illness, but would have continued to work if his illness had not intervened. Applicant further testified that the hypertension was diagnosed when he was 55 years old, and that his doctor had advised him to stop smoking, but said nothing about alcohol consumption.

The WCJ issued findings and award, determining that applicant had sustained industrial injury to his kidneys, his right lower extremity, his internal system, and his heart, and had work-related hypertension, "for the period 1/65 to 2/26/91 (pursuant to Labor Code Section 5402)." The WCJ found that applicant was permanently and totally disabled, and that there was need for further medical treatment for the applicant's renal and hypertensive conditions.

In her opinion on decision, the WCJ discussed applicant's medical history in detail, relying on the report dated March 25, 1991, by Kaiser physician Mark Saroyan, M.D., and on Kaiser's medical records. (The records, designated exhibit 20, which were extensive, were admitted at trial after being subpoenaed by defendant SCIF. Dr. Saroyan's reporting was included.) The WCJ's summary included the following: "In 1980, the applicant became a radio dispatcher. At that same time he was diagnosed as having hypertension and high cholesterol. This hypertension was not under control since the applicant stopped taking his medicine. During the period of 1984 to 1986, applicant had various polyps and possible cancerous growth[s] of his vocal cords with subsequent operations [o]n 6/8/84, 5/85, 4/86. During this time the applicant was [a] 2-pack a day smoker and possible alcohol user. The record is very vague about applicant's use of alcohol. Thus by 4/89, the applicant was diagnosed with uncontrollable hypertension, gallstones, hiatal hernia and chest pains. As for the chest pains, it was determined that the applicant had a normal EKG and no cardiac problems. Also at that time, applicant's care was transferred to Kaiser HMO. Eventually by 1991, the applicant had a renal failure which eventually resulted in dialysis with subsequent complication of amputation of his right first and second toes. Subsequent to 1991, the applicant had a history of unidentified G.I. bleeding with severe vascular disease. At the present time, the applicant is on dialysis for his total renal or kidney failure."

The WCJ elaborated further. "Applicant had a renal vascular hypertension which is the narrowing of the arteries to the kidneys. The kidneys, to ***680** compensate for the restricted flow of blood, produce[d] renin, a hormone which increase[d] blood pressure, hence renal vascular hypertension, as indicated by the Kaiser records. Thus, the applicant's hypertension was not a stress-related hypertension. This hypertension and the narrowing of arteries eventually [led] to ... applicant's renal failure. A stress-related hypertension is a hereditary condition which is exacerbated by a person's diet, weight, smoking habits, alcohol use and other contributory factors. In this case, the applicant's smoking contributed to his vascular narrowing disease of his arteries to his kidneys.... [¶] Applicant had renal vascular hypertension as opposed to stress caused hypertension. This is the reason why the applicant's hypertension was uncontrollable by the usual medications, which did not benefit him at all. The proper treatment for renal vascular hypertension is aorta-bi-iliac bypass and/or aorta-left-renal bypass....

Thus, it is found that the renal vascular hypertension with eventual renal failure and dialysis and amputation of the applicant's toes is non-industrial."

Finally, the WCJ declared: "Now, comes the interesting part of the case ..., the 90-day presumption applies. However, this presumption is rebutt[ed] by evidence discovered subsequent to the 90-day period. The Labor Code is not clear as to what type of evidence, i.e., medical or testimonial evidence for the delay. In this case, defense attorney wanted to present the testimony of the adjuster Amanda Corral-Cortez as to why the objection was not timely served on the applicant and his attorney within the 90 days. The WCJ had ruled that the testimony was inadmissible since her name as a witness was not listed either on his 7/23/93 MSC Statement [(Mandatory Settlement Conference Statement)] and [*sic*] the 8/4/93 Settlement Conference Summary. Because of the operation of Labor Code Section 5402, it is found the applicant's injury is industrial under the 90 day rule."

SCIF petitioned for reconsideration, pointing out what it deemed the "inconsistent" findings made by the WCJ. The WCJ recommended denial of reconsideration in her report and recommendation to the Board, because SCIF had not denied the injury in timely fashion. "The primary purpose of this Labor Code Section was that the defendants expeditiously investigate all claims in a timely manner so that the applicant will not be held in limbo as to the compensability of his injury. Defendants admitted that their denial was not timely ...." As to barring the testimony of SCIF's claims adjuster, the ***681** WCJ pointed out that by the time of the mandatory settlement conference "defendants had had approximately two years in which to investigate the applicant's claim," and discovery had closed on that date pursuant to Labor Code section 5502, subdivision (d)(3). [FN3]

> FN3 Labor Code section 5502 is a procedural statute, governing hearings and calendaring of workers' compensation matters, among other things. In pertinent part, subdivision (d)(3) provides "[d]iscovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference."

The Board denied SCIF's petition for reconsideration without further discussion. SCIF filed a verified, timely petition for writ of review in this court on September 2, 1994, observing there had been no published appellate opinion on what Labor Code section 5402 means, what kind of presumption has been created, and most particularly, what kind of evidence effectively rebuts the presumption created by the statute. SCIF argued that all its medical reports constituted evidence which rebutted the presumption, but did not submit the reports upon which it relied with the writ petition. (They are included in the Board record, however, and have been part of our review.) Kaiser filed opposition to the issuance of a writ, contending there have been several Board panel opinions in recent years taking the position the only rebuttal evidence admissible to combat the presumption of section 5402, once noncompliance by the employer/carrier has been established, is evidence that was *notreasonablyobtainable* within the 90-day period, and that these opinions had stated the dispositive rule in this case. This court issued a writ of review.

Discussion

I. *Statutory Intent*

(1) "A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [20 Cal.Rptr.2d 523, 853 P.2d 978].) When the meaning of a statute is uncertain, resort may be had to the history of the legislation, including legislative and other reports, to resolve such ambiguities as exist. (*Id.* at p. 393.)

(2a) In the case of Labor Code section 5402, the 1989 amendment to the section was one result of attempts "by representatives of organized labor, management and the insurance industry following several years of negotiation intended to streamline and improve the workers' compensation benefit ***682** delivery system...." (Enrolled Bill Rep., Assem. Bill No. 276 (Sept. 19, 1989) Dept. Industrial Relations, p. 4.) Its primary purpose, as the WCJ correctly stated, was to expedite the entire claims process in workers' compensation by limiting the time during which investigation by the employer of a claim by an

injured worker could be undertaken-90 days-without being penalized for delay. The "penalty" provided for delay was that a rebuttable presumption of compensability would attach to the claim.

II. *The Nature of the Presumption Created*

We consider what sort of "rebuttable presumption" the Legislature intended to create in Labor Code section 5402. "A presumption is an assumption of fact that the law *requires* to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence." (Evid. Code, § 600, subd. (a), italics added.) "A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof." (Evid. Code, § 601.)

"A presumption affecting the burden of producing evidence requires the ultimate fact to be found from proof of the predicate facts in the absence of other evidence. If contrary evidence is introduced then the presumption has no further effect and the matter must be determined on the evidence presented. (Evid. Code, § 604.)" (*In re Heather B.* (1992) 9 Cal.App.4th 535, 561 [11 Cal.Rptr.2d 891].) A presumption affecting the burden of proof has a more substantial impact in determining the outcome of litigation. The effect of a presumption affecting the burden of proof is "to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." (Evid. Code, § 606.)(3) While a presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof "is established to implement some public policy other than to facilitate the particular action in which it applies. [Citations.]" (*In re Heather B.*, *supra*, at p. 561; Evid. Code, § 605.)

(2b) We have concluded that the rebuttable presumption of Labor Code section 5402 was intended to affect the burden of proof rather than the burden of producing evidence, because it was created by the Legislature to implement the public policy of expediting workers' compensation claims. As such, once the underlying facts have been established, its effect in workers' compensation litigation is to place upon the defendant employer/carrier the burden of proving the employee/applicant does not have a compensable ***683** injury; in the absence of such proof, the consequences are adverse to the employer/carrier.

(4a) In this case, "the underlying facts" were that applicant had made a timely claim to which SCIF had not responded for approximately four months, instead of the ninety days permitted by the statute. The WCJ's ruling barring the testimony of the SCIF claims adjuster was highly significant, in that SCIF was thus unable to avoid the application of the presumption. SCIF then had to assume the burden of proof on the primary issue in the case, which was industrial causation. Resolution of this issue required medical evidence, usually presented through medical reports from examining, treating or evaluating doctors. At trial, SCIF did offer, and the WCJ admitted, the reports of four defense doctors, obtained after January 2, 1992, including those prepared on August 2, 1993, and August 4, 1993, by internist and cardiologist Richard Hyman, M.D., in which he diagnosed hypertension and atherosclerotic peripheral vascular disease and concluded that neither were work related. All of these reports, however, were offered without explanation as to why they had not been obtained during the 90-day investigation period allowed by Labor Code section 5402.

III. *What Constitutes Evidence Which Will Rebut the Presumption of Compensability*

Once the presumption has attached to a claim, at issue is what evidence may be admitted on behalf of the employer/carrier to rebut the presumption. Labor Code section 5402 states that the evidence be only that "discovered subsequent to the 90-day period." While there is as yet no appellate discussion of this issue, the Board has spoken to it in a number of panel decisions. (5) We adhere to "the well-established principle that contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized." (*Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638 [211 Cal.Rptr. 683].)

(4b) In *Napier v. Royal Insurance Co.* (1992) SAC 174290, 20 Cal. Workers' Comp. Rptr. 124 (writ den.), [FN4] a Board panel rejected an extremely broad interpretation of Labor Code section 5402

which would have barred all further discovery once the presumption applied, but said: "While the ***684** presumption of compensability will preclude the defendant from disputing its liability for injury with evidence which could have been obtained with the exercise of reasonable diligence within the initial 90 day period, defendant is not thereafter permanently prevented from seeking evidence on corollary and related issues." The conclusion that the Labor Code section 5402 presumption operates to bar the presentation of evidence which "could have been obtained with the exercise of reasonable diligence" was also reached by the Board in *Finess v. American Motorists Ins. Co.* (1992) SAC 173856, 20 Cal. Workers' Comp. Rptr. 303 and *Casey v. CIGNA* (1993) GRO 7572, 5718, 6593, 21 Cal. Workers' Comp. Rptr. 248. What constitutes "reasonable diligence" is being decided on a case-by-case basis.

> FN4 A board panel decision reported in the California Workers' Compensation Reporter is regarded as a properly citable authority, particular on the issue of contemporaneous administrative construction of statutory language. (*Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [257 Cal.Rptr. 813].)

The Board has also identified at least one area where the presumption does not operate as a bar against the admission of evidence which may rebut compensability of a claim. An applicant's testimony at a hearing may rebut the presumption, if the WCJ does not find the applicant credible on the issue of compensability; the Board has reasoned that such testimony could not reasonably have been discovered in the 90-day period. (*Davis v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1066.)Following the same reasoning, the testimony of other witnesses at trial or by deposition on behalf of the applicant may rebut the presumption. (*Witherell v. Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 1128, writ den.; and see *Pinson v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 141.)

None of these decisions assist SCIF in its contention that it should have been permitted to rebut the presumption with the evidence contained in its medical reports, or the evidence discussed by the WCJ which was contained in the records of lien claimant Kaiser, all of which could have reasonably been obtained in the 90-day period after August 30, 1991. In short, SCIF never established that it had exercised reasonable diligence in investigating this claim.

IV. *The WCJ's Labor Code Section 5502, Subdivision (d)(3), Ruling*

SCIF did offer the testimony of its claims adjuster Corral-Cortez at trial, although she had not been identified as a witness at the mandatory settlement conference or in the settlement conference statement. The WCJ ruled that this circumstance operated to exclude the evidence, pursuant to Labor Code section 5502, subdivision (d)(3). This statute, which was enacted in 1989 and has undergone amendment on several occasions since, was considered by the Board in *Zenith Insurance Co.* v. *Ramirez* (1992) 57 Cal.Comp.Cases 719.The Board (in bank) upheld and applied the mandatory settlement ***685** procedure including the provision closing discovery to a number of cases, noting that it was established "to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing." (*Id.* at p. 727.)

In *Rodriguez v. Workers' Comp. Appeals Bd.* (1994) 30 Cal.App.4th 1425, 1433 [35 Cal.Rptr.2d 713], the Court of Appeal held that pursuant to Labor Code section 5402, "... it is the *rejection* [of liability] which must occur within the 90-day period, not the receipt of notice of that rejection." (Italics added.) In view of *Rodriguez*, the WCJ's ruling excluding the adjuster's testimony was particularly significant, because the testimony would very likely have been relevant concerning whether SCIF had in fact rejected the claim within the 90-day period but had simply not communicated its decision to the claimant. The WCJ, in the case before us, defended her ruling on this issue in her report to the Board, pointing out no explanation had been given at trial why the adjuster's identity had not been disclosed at the mandatory settlement conference, and emphasizing there had been inexcusable delay in this case. We conclude that the type of delay demonstrated herein was of the sort that Labor Code section 5402 was designed to discourage. The Board correctly upheld the WCJ's ruling.

Disposition

The Board's order dated July 21, 1994, denying

reconsideration, is affirmed.

Croskey, J., and Aldrich, J., concurred.

Petitioner's application for review by the Supereme Court was denied November 2, 1995. ***686**

Cal.App.2.Dist.
State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.
37 Cal.App.4th 675, 43 Cal.Rptr.2d 660, 60 Cal. Comp. Cases 717, 95 Cal. Daily Op. Serv. 6300, 95 Daily Journal D.A.R. 10,685

END OF DOCUMENT

Commission on State Mandates

Original List Date: 7/8/2002
Last Updated: 4/26/2007
List Print Date: 02/21/2008
Claim Number: 01-TC-28
Issue: Prevailing Wage Rate

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

Tel: (951) 303-3034
Fax: (951) 303-6607

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621
Fax: (866) 481-2682

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350
Fax: (916) 727-1734

Mr. Steve Smith
Steve Smith Enterprises, Inc.
3323 Watt Avenue #291
Sacramento, CA 95821

Tel: (916) 216-4435
Fax: (916) 972-0873

Mr. Anthony Mischel Department of Industrial Relations Division of Administration 320 W. Fourth St., Suite 600 Los Angeles, CA 90013	Tel: Fax:	(213) 576-7725 (213) 576-7735
Mr. David E. Scribner Scribner & Smith, Inc. 2200 Sunrise Boulevard, Suite 220 Gold River, CA 95670	Tel: Fax:	(916) 852-8970 (916) 852-8978
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: Fax:	(916) 324-4728 (916) 319-0116
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	(916) 323-5849 (916) 327-0832
Mr. Scott A. Kronland Altshuler, Berzon, Nussbaum, Rubin & Demain 177 Post Street, Suite 300 San Francisco, CA 94108	Tel: Fax:	(415) 421-7151 (415) 362-8064
Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Tel: Fax:	(916) 485-8102 (916) 485-0111
Ms. Chris Krueger Department of Justice 1300 I Street, 17th Floor P.O. Box 944255 Sacramento, CA 95814	Tel: Fax:	(916) 324-5467 (916) 323-2137
Mr. Rob Cook Office of Public School Contruction Department of General Services 1130 K Street, Suite 400 Sacramento, CA 95814	Tel: Fax:	(916) 445-3160
Mr. William C. McGuire Clovis Unified School District 1450 Herndon Avenue Clovis, CA 93612	**Claimant** Tel: Fax:	(559) 327-9110 (559) 327-9129

Ms. Donna Ferebee
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 323-9584

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
Sacramento, CA 95814-6549
Tel: (916) 322-4005
Fax: (916) 323-8245

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
Tel: (916) 669-5116
Fax: (888) 487-6441

Mr. David Cichella
California School Management Group
1111 E Street
Tracy, CA 95376
Tel: (209) 834-0556
Fax: (209) 834-0087

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
4100 Normal Street, Room 3209
San Diego, CA 92103-8363
Tel: (619) 725-7785
Fax: (619) 725-7564

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814
Tel: (916) 445-0328
Fax: (916) 323-9530

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814
Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864
Tel: (916) 595-2646
Fax:

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816
Tel: (916) 324-0256
Fax: (916) 323-6527

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

Claimant Representative
Tel: (916) 565-6104
Fax: (916) 564-6103