

ITEM 7
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5,
65975, 65976, 65977, 65978, 65979, 65980, 65981

Statutes 1977, Chapter 955, Statutes 1979, chapter 282, Statutes 1980,
Chapter 1354, Statutes 1981, Chapter 201, Statutes 1982, Chapter 923, Statutes
1983, Chapter 1254, Statutes 1984, Chapter 1062, Statutes 1985, Chapter 1498,
Statutes 1986, Chapters 136 and 887, Statutes 1994, Chapter 1228

Developer Fees
02-TC-42

Clovis Unified School District, Claimant

I. SUMMARY OF THE MANDATE

This program addresses activities required as a condition of imposing developer fees to help pay for school facilities. There are three developer fee programs at issue in this program which are commonly referred to as: the School Facilities Act of 1979,¹ AB 2926, and the Mitigation Fee Act.

On December 1, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
 - 1) Conditions of overcrowding exists in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
 - 2) All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible methods for reducing those conditions exist.
- Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

¹ Not to be confused with the Leroy Greene School Facilities Act.

- Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

If an ordinance is adopted by the city council or county board of supervisors pursuant to Government Code section 65974 requiring the dedication of land, the payment of fees in lieu thereof, or a combination of both:

- Make a recommendation regarding the amount of fees to be assessed, within 60 days following the initial permit for the development, when required by the city council or county board of supervisors; and
- Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, enter into an agreement with the city or county for the purpose of determining the distribution of revenues to both school districts from the fees levied pursuant to the School Facilities Act.

If a school district receives funds pursuant to the School Facilities Act:

- Maintain a separate account for any fees paid; and
- File a report by October 15 of each year with the city council or county board of supervisors which specifies:
 - The balance in the account at the end of the previous fiscal year;
 - The facilities leased, purchased, or constructed;
 - The dedication of land during the previous fiscal year; and
 - Which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist.

II. Commission’s Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. Alternatively, the Commission’s regulations authorize Commission staff to expedite the parameters and guidelines process by drafting proposed parameters and guidelines within ten days following the adoption of the statement of decision. The test claimant may then file modifications and comments on the staff’s draft proposed parameters and guidelines to clarify the reimbursable activities, propose new activities that are considered reasonably necessary to comply with the mandate, propose a reasonable reimbursement methodology (RRM) when appropriate, and identify any offsetting savings or revenues.² The alternate process was used here.

The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a

² California Code of Regulations, Title 2, section 1183.12.

description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.³

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.⁴ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.⁵ Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.⁶

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines would then be submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Procedural History

The statement of decision was adopted on December 1, 2011.⁷ On December 14, 2011, staff's draft proposed parameters and guidelines were issued for comment.⁸ On December 26, 2011, interested party SixTen and Associates filed comments recommending nonsubstantive amendments to the parameters and guidelines.⁹ The State Controller's Office filed comments on January 13, 2012, also recommending nonsubstantive changes.¹⁰

³ Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

⁴ California Code of Regulations, Title 2, section 1187.

⁵ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

⁶ California Code of Regulations, Title 2, section 1187.5.

⁷ Exhibit A.

⁸ Exhibit B.

⁹ Exhibit C.

¹⁰ Exhibit D.

IV. Staff Analysis

Staff reviewed the statement of decision, the draft parameters and guidelines and the comments filed, and made nonsubstantive changes to conform to other parameters and guidelines adopted by the Commission. Staff made the changes requested by the parties as discussed below.

IV. Reimbursable Activities

Interested party SixTen and Associates recommended adding subtitles to the reimbursable activities to assist claimants in preparing claim forms. Staff made this change.

V. Claim Preparation and Submission

The State Controller's Office requested that the language describing the process for reporting contracted services be updated to include the most recent boilerplate language. Therefore, staff updated the language to conform to the parameters and guidelines previously adopted by the Commission.

The State Controller's Office also requested that the Indirect Cost Rate language be revised to include the most recent language adopted by the Commission. Staff made this change.

Staff also deleted the direct cost section for training since training is not a reimbursable activity for this program.

VIII. State Controller's Claiming Instructions

Prior to 2012, existing law required the State Controller to issue claiming instructions for each reimbursable mandate no later than 60 days after receiving the adopted parameters and guidelines from the Commission. Last year, SB 112 (Statutes 2011, chapter 144) revised this statute to require the State Controller to issue the claiming instructions within 90 days of receiving the parameters and guidelines. At the State Controller's request, staff updated this section to reflect this new 90-day requirement.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the attached proposed parameters and guidelines beginning on page 5; and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

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 - 2) All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible methods for reducing those conditions exist.
- Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.
- Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

If an ordinance is adopted by the city council or county board of supervisors pursuant to Government Code section 65974 requiring the dedication of land, the payment of fees in lieu thereof, or a combination of both:

- Make a recommendation regarding the amount of fees to be assessed, within 60 days following the initial permit for the development, when required by the city council or county board of supervisors; and
- Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, enter into an agreement with the city or county for the purpose of determining the distribution of revenues to both school districts from the fees levied pursuant to the School Facilities Act.

If a school district receives funds pursuant to the School Facilities Act:

- Maintain a separate account for any fees paid; and
- File a report by October 15 of each year with the city council or county board of supervisors which specifies:
 - The balance in the account at the end of the previous fiscal year;
 - The facilities leased, purchased, or constructed;
 - The dedication of land during the previous fiscal year; and
 - Which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist.

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Clovis Unified School District filed the test claim on June 23, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, ~~training packets~~, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Local Government Notice of Finding

- 1. Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
 - Conditions of overcrowding exists in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
 - All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible methods for reducing those conditions exist.
- 2. Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

B. Schedule of Fees

Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

C. Fee Amount

If an ordinance is adopted by the city council or county board of supervisors pursuant to Government Code section 65974 requiring the dedication of land, the payment of fees in lieu thereof, or a combination of both:

- 1. Make a recommendation regarding the amount of fees to be assessed, within 60 days following the initial permit for the development, when required by the city council or county board of supervisors; and
- 2. Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, enter into an agreement with the city or county for the purpose of determining the distribution of revenues to both school districts from the fees levied pursuant to the School Facilities Act.

D. Fund Accounting

If a school district receives funds pursuant to the School Facilities Act of 1979¹:

- 1. Maintain a separate account for any fees paid; and
- 2. File a report by October 15 of each year with the city council or county board of supervisors which specifies:
 - The balance in the account at the end of the previous fiscal year;
 - The facilities leased, purchased, or constructed;
 - The dedication of land during the previous fiscal year; and
 - Which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

¹ Not to be confused with the Leroy Greene School Facilities Act.

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

~~Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.~~

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

~~6. Training~~

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.~~

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

~~School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than ~~90~~ 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the statement of decision, is on file with the Commission.