

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.