



State of California • Arnold Schwarzenegger, Governor
State and Consumer Services Agency
DEPARTMENT OF GENERAL SERVICES
Interagency Support Division • Office of Public
School Construction

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Commission on State Mandates
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**COMMISSION ON
STATE MANDATES**

As requested in your letter dated December 21, 2007, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School District, which asked the Commission to determine whether specified costs that are incurred by the school district and the county office of education (hereafter, districts) to implement various statute and codes are reimbursable ("*Williams Case Implementation II*," Claim No. 07-TC-06).

The requirements that the test claim refers to are a result of Chapter 704, Statutes of 2006, (Assembly Bill (AB) 607 - Goldberg). AB 607 amended existing legislation that arose from the settlement of the *Eliezer Williams, et al, vs. State of California* case. The costs to implement that legislation are currently under review by the Commission on State Mandates (Claim Number 05-TC-04). Therefore, the current test claim (07-TC-06) is a supplement to 05-TC-04, and the following OPSC comments largely duplicate the comments provided for 05-TC-04.

1. Do the provisions listed in the notice impose a new program or higher level of service within an existing program upon local entities within the meaning of Section 6, Article XIII B of the California Constitution and costs mandated by the State pursuant to Section 17514 of the Government Code?

Participation in the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (LPP), established through Education Code (EC) Sections 17000 through 17066, and the Leroy F. Greene School Facilities Act of 1998, established through EC Section 17070.10 et al, seq., by districts is voluntary and not a compulsory activity. The Education Code does not compel districts to obtain funding from the State through the School Facility Program (SFP) as a condition of building or modernizing schools. Districts may choose to build facilities through the use of district-raised funds or other means. Therefore, program elements are only required if districts choose to participate in the program.

Participation in the Deferred Maintenance Program (DMP), established through EC Sections 17582 through 17588 and 17591 through 17592.5, is also voluntary on the part of districts. EC Section 17582 states that "...each school district *may* establish a restricted fund to be known as the 'district deferred maintenance fund'..." No requirement is made in statute that a district is required to establish this account and therefore participate in the program. Districts may choose to maintain facilities through the use of district-raised funds or other means.

The State Relocatable Classroom Law of 1979 (SRCP), established under EC Section 17085 et al, seq., is an elective program from which school districts may lease relocatable classrooms on an annual basis. As a condition of receipt of a building under the SRCP, a

school district must certify that it will, at its own expense, make all necessary maintenance repairs, renewal and replacement to ensure that the relocatable classroom(s), furniture, and equipment are at all times kept in good repair, working order and condition.

As a result of AB 607, the Facility Inspection Tool (FIT) was developed by OPSC and approved by the State Allocation Board. The FIT replaces the Interim Evaluation Instrument (IEI) to determine whether a school facility is in good repair. To evaluate the conditions of a facility, the district may use the FIT, or it may use an alternative tool or system provided that it contains, at minimum, the components addressed in the FIT. Ensuring that school facilities are in good repair has always been a requirement of the SFP, LPP, DMP, or SRCP. Furthermore, the requirement for the establishment of a facility inspection system (FIS) to ensure that all schools are in good repair, as described in EC Section 17002, only applies if a district chooses to participate in these programs. Therefore, it is our opinion that the declarations of the test claim stating that AB 607 increased direct and indirect costs as a result of implementing the new FIS is unfounded, as it only applies to districts choosing to participate in the SFP, LPP, DMP, or SRCP.

2. Does Government Code Section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the State?

Yes. It appears that Government Code (GC) Section 17556(d) precludes the Commission from finding that any provisions of the test claim impose costs mandated by the State.

GC Section 17556(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 increase level of service.

Statute allows a school district the authority to raise program costs through the passage of local bonds and other revenue sources including developer fees for capital outlay needs.

GC Section 17556(e):

The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the cost of the state-mandate in an amount sufficient to fund the cost of the state mandate.

Chapter 899, Statutes of 2004, (Senate Bill 6 - Alpert) allocated funding based on a per-pupil formula, outlined in EC Section 17592.70 (c), for all impacted districts to perform the comprehensive needs assessment, as required by the provisions of the School Facilities Needs Assessment Grant Program.

AB 607 allocated funding on a per-site basis formula, as outlined in EC Section 1242, for all impacted county offices of education to conduct site inspections to complete the FIT.

3. Have funds been appropriated for this program (e.g. State budget) or are there any other sources of funding available? If so, what is the source?

All districts that choose to participate in either the LPP or the SFP must establish a restricted account for the exclusive purpose of providing money for ongoing and major maintenance of school buildings in order to comply with the requirement that the projects funded under those programs are at all times kept in good repair. In each year throughout the term of the lease agreement of all projects constructed under the LPP, school districts were required to deposit a minimum of two percent of the applicant school district's General Fund budget for each fiscal

year. Districts choosing to participate in the SFP must deposit into this account a minimum of three percent of the district's total General Fund expenditures each fiscal year for 20 years after the receipt of SFP funds. Deposits in excess of two and a half percent may count toward the districts' DMP contributions.

For districts who participate in the DMP, the DMP receives its funding annually. The State matches the districts' deferred maintenance program contributions up to a specified level. Eligible projects may consist of major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing and floor systems as well as other purposes listed in Education Code Section 17582.

The SRCP does not provide funding to districts for lease payments or maintenance costs of the relocatable classrooms.

County offices of education that are required to complete the FIT are provided \$2,500 for each elementary school site, \$3,500 for each middle or junior high school site, \$5,000 for each high school. Additional funding is provided for sites where the enrollment increased by 20 percent from the previous year. An additional \$1.00 per pupil funding is provided when a county office of education is required to visit more than 150 sites.

For the reasons stated above, the OPSC concludes that districts do not incur state-mandated costs for the implementation of a FIS as the FIS requirement only applies if the district chooses to participate in the voluntary school facility programs. Furthermore, the statute that imposed the School Facilities Needs Assessment Grant Program provided a one-time grant to offset the cost of the new requirements.

As required by the Commission's regulations, the OPSC is including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 3, 2005 letter have been provided with copies of this letter via either United States mail or, in the case of other state agencies, Interagency Mail Service.

Please do not hesitate to call me at (916) 323-7252 with any questions you may have regarding this response.

Regards,



ROB COOK
Executive Officer

cc: Commission's Parties and Interested Parties List as of 12/21/07 (Enclosure)