BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, 39003, 39120 and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691,

Case Nos.: 02-TC-30, 02-TC-43 and 09-TC-01

School Facilities Funding Requirements

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(*Adopted on March 24, 2011*)

741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992 and 1002; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes 2002, Chapters 33, 199, 935, 1075, and 1168

Health and Safety Code Sections 25358.1 and 25358.7.1 as added by Statutes 1999, Chapter 23

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130: and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70 as added or amended by Registers 78-05, 79-34, 80-12, 80-26, 81-19, 84-51, 86-44, 98-49, 98-52, 99-11, 99-14, 99-29, 99-31, 99-41, 99-52, 2000-02, 2000-11, 2000-26, 2000-29, 2000-37, 2000-52, 2001-01, 2001-24, 2001-30, 2001-33, 2001-51, 2002-15, 2002-18, 2002-33, 2002-37, 2002-38, 2002-40, 2002-45, 2003-03, 2003-06, 2003-07, 2003-08, 2003-09, 2003-18, 2003-24

The Substantial Progress and Expenditure Audit Guide of May 2003; The School Facility Program Guidebook of January 2003; The State Relocatable Classroom Program Handbook of January 2003; and The Lease-Purchase Applicant Handbook of April 1998

Filed on June 4, 2003 by

Clovis Unified School District, Claimant

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Dated: March 28, 2011

Drew Bohan, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, 39003, 39120 and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982,

Case Nos.: 02-TC-30, 02-TC-43 and 09-TC-01

School Facilities Funding Requirements

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(*Adopted on March 24, 2011*)

Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992 and 1002; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes 2002, Chapters 33, 199, 935, 1075, and 1168

Health and Safety Code Sections 25358.1 and 25358.7.1 as added by Statutes 1999, Chapter 23

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130: and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70 as added or amended by Registers 78-05, 79-34, 80-12, 80-26, 81-19, 84-51, 86-44, 98-49, 98-52, 99-11, 99-14, 99-29, 99-31, 99-41, 99-52, 2000-02, 2000-11, 2000-26, 2000-29, 2000-37, 2000-52, 2001-01, 2001-24, 2001-30, 2001-33, 2001-51, 2002-15, 2002-18, 2002-33, 2002-37, 2002-38, 2002-40, 2002-45, 2003-03, 2003-06, 2003-07, 2003-08, 2003-09, 2003-18, 2003-24

The Substantial Progress and Expenditure Audit Guide of May 2003; The School Facility Program Guidebook of January 2003; The State Relocatable Classroom Program Handbook of January 2003; and The Lease-Purchase Applicant Handbook of April 1998

Filed on June 4, 2003 by

Clovis Unified School District, Claimant

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 24, 2011. Mr. Art Palkowitz represented the claimant, Clovis Unified School District and Ms. Donna Ferebee represented the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 *et seq*., and related case law.

The Commission adopted the staff analysis to deny this test claim at the hearing by a vote of 4-2 with one member abstaining.

Summary of Findings

The Commission finds that the test claim statutes, regulations and alleged executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

1. Education Code sections 39003 and 39120 were repealed in 1993, prior to the beginning of the potential reimbursement period for this test claim and thus cannot be reimbursable.
2. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002 (SB 62), because this statute was the subject of a final decision of the Commission, Acquisition of Agricultural Land for a School Site (98-TC-04 and 01-TC-03).
3. Health and Safety Code section 25358.1, as added by Statutes 1999, chapter 23 (SB 47) does not impose a "program" and thus is not subject to reimbursement under article XIII B, section 6 of the California Constitution.
4. The Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1988 are not executive orders subject to Article XIII B, section 6.
5. Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 (SB 47), imposes requirements on DTSC, not school districts.
6. The statutes below, which generally require compliance school facility funding requirements, do not mandate school districts to perform any activities because:
    a) School districts are not legally compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.
    b) There is no evidence in the record to support a finding that school districts are practically compelled to: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, request and accept SFP funding, issue local bonds, or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342,

15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes, 2002, Chapters 33, 199, 935, 1075, and 1168

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130: and Statutes 2008, Chapter 148

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70

COMMISSION FINDINGS

I. Background

This test claim addresses the activities required of school districts to comply with school facilities funding requirements (SFFRs). If a school district makes a decision to build or modernize a school, it must determine how to fund that construction. Generally, a school can seek grant funding from the state through the State School Facility Program (SFP), which is funded through state bonds and/or it may issue local bonds pursuant to one of several local bond acts. Usually, but not always, schools rely on a combination of state and local bond funding for facilities.

If a school district decides to issue local bonds, it must comply with the public disclosure and other accountability requirements contained within the act under which the district decides to issue bonds, some of which were required by the statewide bond initiatives specifying the voting requirements for the issuance of local bonds. If a school district decides to seek state bond funding through the SFP (i.e. grant funding), the district must comply with various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements as a condition of receipt of that funding which includes preparation of hazardous materials assessments (HMA) and performing many of the other activities pled in this consolidated test claim.

HMAs are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a Preliminary Endangerment Assessment (PEA) is required to evaluate the threat posed to public health or the environment. The California Education Code requires DTSC to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.[1] School districts may elect to proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.[2]

There are two other programs pled in this test claim that do not fit neatly into the state funding or local bond funding categories:

- The State Relocatable Classroom Law of 1979 under which claimant alleges costs for activities related to the lease of portable classrooms from the State; and
- The California School Finance Authority Act, under which a school district may borrow funds from the state which are generally repaid with future Proposition 98 funds.

In order to determine whether the activities to which claimant's alleged costs are connected constitute state-mandated local programs or higher levels of service subject to reimbursement under article XIII B section 6 of the California Constitution, it is helpful to have an understanding of the history of school facility financing in California and the various programs under which costs are being claimed.

A. A Brief History of the Role of the State in School Facility Finance[3]

Prior to 1976, school facilities were funded entirely by local tax revenues with the assistance of state loans and land grants and private donations. From the early days of California statehood until 1933, state involvement in school facility finance was restricted to providing land grants to local communities for the purpose of establishing public schools. The California Constitution set aside large tracts of public land for the creation of public schools and required that every district in the state operate a public school for at least three months a year. The construction and renovation of these schools was financed entirely with local tax revenue. In fact, in the late 1960's over 90 percent of public school funding came from local property taxes, supplemented by the State School Fund.[4]

The Long Beach earthquake struck just hours after classes ended on March 10, 1933 "and caused numerous school buildings in Long Beach and surrounding communities to collapse which provoked 'public outcry over the vulnerability of school building to earthquake-related damage.' In response,

[1] Education Code section 17213.2.

[2] Education Code section 17213.1.

[3] In addition to the citations to specific sources, this overview draws extensively from the history of California school facility finance provided by two reports: *School Facility Financing – A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds* (Cohen, Joel, February 1999), and *Financing School Facilities in California* (Brunner, Eric J., October 2006).

[4] *County of Sonoma v. Commission on State Mandates*, "*County of Sonoma*" (2000), 84 Cal.App.4th 1264, 1271. (Citing *Serrano v. Priest* (1971) 5 Cal. 3d 584, 591 & fn. 2 (*Serrano I*.))

the state Legislature passed the Field Act on April 10th 1933." [5] The Act mandated the Division of the State Architect (DSA) to develop earthquake-resistant design and construction for all public schools in the state. It also required architects, engineers and inspectors to file reports verifying that schools were in compliance with the provisions of the Field Act.[6] Thus, state involvement in school construction and renovation began with state oversight of construction design and mandatory construction inspections. Although the Field Act has been amended over time, the basic requirements of the Act have been continuously in place.

The State Allocation Board was created in 1947, and was directed by the state Legislature to allocate state funds for school construction and renovation. Originally, the funds allocated were loans to the local districts. Beginning in the 1970's, however, school facility finance began to evolve from a locally-financed system to a system best described as a partnership between local school districts and the state. First, in 1971, the disparity created by reliance on the value of a district's real estate was found to impermissibly discriminate in *Serrano I*.[7] After *Serrano I*, the state increased the amount of state aid to schools and tied limitations to inflation adjustments such that schools with lower local revenues received higher upward inflation adjustments. At this point, "…financial responsibility was still primarily with local government, with the state supplying aid in an attempt to remedy the deficiencies identified by the court"[8] in *Serrano I*.

In 1976, in *Serrano II*[9] the court determined that the Legislature's actions to remedy the inequities were insufficient and that the school finance system "impermissibly 'renders the educational opportunity available to the students of this state a function of the taxable wealth [per pupil] of the districts in which they live."[10] The Legislature then passed further legislation, AB 65, (Stats. 1977, ch. 894) which would have back-filled poorer districts' revenues with state assistance, if actual revenues fell below a scheduled amount and would also transfer some revenues from high to low wealth districts. School finance though, even under this scheme, would have remained a jointly funded system, with the majority of funds coming from local property tax revenues. However, before AB 65 could take effect, the voters enacted Proposition 13 in 1978, which fundamentally altered the ability of local governments to raise funds through local property tax revenues.

Between 1970 and 1982, student enrollment in California's public schools was declining and hence there was little demand for state funds. However, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness and capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

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[5] Brunner, *supra*, p. 4, citing Heumann, Leslie, *Preliminary Historic Resources Survey of the Los Angeles Unified School District: Historic Context Statement*, prepared for the Los Angeles Unified School District Facilities Services Division by Science Applications International Corporation, Los Angeles, CA, March 2002, p. 9.

[6] Brunner, *supra*, p. 4.

[7] *Serrano I, Ibid*.

[8] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1271.

[9] *Serrano v. Priest (1976)* 18 Cal.3d 728 (*Serrano II*).

[10] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1271, (citing *Serrano II*).

The enactment of the Leroy Greene State School Building Lease-Purchase Law in 1976[11] marked the beginning of the transition from state loan to state grant funding of school facilities. However, in June of 1976 the voters rejected the bond initiative that was necessary to fund the Lease Purchase Program. Because of declining enrollment, the lack of funding did not pose a problem for most school districts for several years.[12] Eventually, however, the Legislature and the voters provided funding for the lease-purchase program through several bond initiatives and also provided school districts with authority to raise local funds though the Mello-Roos Community Facilities District Act and the imposition of developer fees, neither of which have been pled in this test claim. The Lease-Purchase Law significantly altered the state's role in how school facilities construction was financed. This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The state held title to the schools until the loans were paid off. Over the course of the 1980s and 1990s there were several amendments to the Act that reduced the obligation of school districts to pay for facilities funding and beginning the transition from a loan program to a grant program.

B. An Overview of the Programs Pled

1. Leroy F. Greene School State School Building Lease-Purchase Law School Facility Program/Leroy F. Greene School Facilities Act Overview[13]

As discussed above the Leroy Greene State School Building Lease-Purchase Law was enacted in 1976.[14] The Leroy F. Greene School Facilities Act of 1998, Education Code sections 17070.10 – 17079.30, was chaptered into law on August 27, 1998, establishing the state school facility program (SFP). [15] The same bill that enacted The Leroy F. Greene School Facilities Act of 1998 substantially

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[11] Education Code Sections 17700- 17766, Statutes 1976, chapter 1010.

[12] Brunner, *supra*, p. *6.*

[13] Specifically Education Code sections 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036,17038, 17040, 17040.1, 17040.2, 17040.3, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 1706417065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25 and 100620 and California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50 and 1865.70.

[14] Note that effective November 4, 1998, with the exception of the funding joint use facilities pursuant to Education Code section 17052, all school construction projects approved or funded by the SAB must be approved pursuant to Chapter 12.5 (i.e. Education Code sections 17070.10 *et seq*.)

[15] Statutes 1998, chapter 407, section 32 (SB 50).

amended the Leroy Greene State School Building Lease-Purchase Law to create one SFP. Proposition 1A, the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, which provided funding for the SFP was approved by the voters on November 3, 1998.

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." 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 able to meet the financial hardship provisions may be eligible for additional state funding of up to 100 percent of the local share of cost. There are a number of requirements that a district must meet in order to receive state funding under the SFP including the requirement to prepare a hazardous materials assessment (HMA) pursuant to Education Code, Title 1, Division 1, Part 10.5 and related statutes.

In order to obtain funding under the SFP, school districts must obtain approval from a number of state agencies. These include the State Allocation Board (SAB), the Office of Public School Construction (OPSC), the Division of the State Architect of the Department of General Services, the School Facilities Planning Division of DOE, DTSC, and the Department of Industrial Relations.

SAB is responsible for approving all state apportionments for new school construction and modernization projects. The OPSC is the administrative arm of the SAB. Its primary responsibilities include: allocating state funds for projects approved by the SAB, reviewing eligibility and funding applications, and providing information and assistance to school districts. The Division of the State Architect has been involved in the process of school construction since the Field Act was first passed in 1933. The primary responsibility of the Division of the State Architect is to review and approve construction plans and to ensure those plans are in compliance with the Field Act. Division of the State Architect approval is required for all new school construction and modernization projects.

The primary role of the School Facilities Planning Division is to approve school district site and construction plans. The School Facilities Planning Division reviews the "educational adequacy" of proposed projects to ensure they meet the needs of students and teachers. The School Facilities Planning Division also works with DTSC to review any potential environmental hazards associated with a project. The final agency involved in the process is Department of Industrial Relations. The primary responsibility of this agency is to ensure that school districts are in compliance with labor laws relating to contractors and employers. Before any funding from the SFP is released to a school district, the district must obtain certification that its Labor Compliance Program has been approved by Department of Industrial Relations.

The process of obtaining state funding through SFP is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are reviewed by the OPSC and then presented to the SAB at one of their monthly meetings for approval. Upon receiving approval from the SAB, a district may request funding by submitting a funding application to the OPSC. The funding application must include supporting documentation that shows that the district's plans for construction have been approved by the Division of the State Architect and the School Facilities Planning Division. The completed funding application is reviewed by the OPSC and then submitted to the SAB for a funding apportionment. Funds apportioned by the SAB are released once the district has provided evidence that it has secured funding for required local matching funds (generally 50 percent of new school construction projects costs and 40 percent of modernization project costs), and evidence that it has entered into a binding contract for at least 50 percent of the proposed construction project. According to the OPSC, most funding applications can now be reviewed and receive final approval from the SAB within 60 to 90 days.

a) Establishing Eligibility

To obtain state funding for new school construction projects, districts must first demonstrate that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment. Districts may establish eligibility on a district-wide basis or, if only some areas within the district are facing capacity constraints, on a High School Attendance Area basis.

The eligibility application for modernization projects consists of a single form, SAB 50-03. To qualify for funding, a school building must be at least 25 years old or, in the case of a portable classroom, at least 20 years old. In addition, districts may submit applications for modernization projects on a site by site basis, rather than the district or School Attendance Area-wide basis used for new school construction eligibility.

b) Applying for Funding

New school construction projects are funded by the state on a per-pupil basis. Site acquisition and development grants are made on a 50/50 state and local matching basis. The amount of the grant is determined by multiplying the number of unhoused students (determined in the eligibility phase), by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs. As of January 1, 2010, the per-pupil grant amounts for new school construction are as follows:

Elementary $8,738
Middle $9,241
High $11,757
Special Day Class – Severe $24,550
Special Day Class – Non-Severe $16,418[16]

Supplemental grants are also available to fund special project needs. The most common supplemental grants are site acquisition grants and site development grants, which respectively cover costs associated with purchasing a site and preparing a site for construction. There are also supplemental grants for meeting fire code, energy efficiency, and special education requirements as well as for multi-level construction, project assistance, replacement with multi-story construction, grants for certain geographic locations, small size projects, new school projects, and urban locations.

The funding application for new school construction consists of a single form, SAB 50-04. While the form itself is relatively simple, districts must also file with their application a number of supporting documents. These include: (1) an appraisal, escrow closing statement or court order and a CDE site approval letter if the project involves site acquisition; (2) DSA approval of construction plans; (3) CDE approval of final plans; and, (4) a set of district certifications that include (among other things) the establishment of a restricted maintenance account, certification that the district will fund its share of the project, and certification that the district's Labor Compliance Program has been approved by the Department of Industrial Relations.

School districts that receive state funding for new construction or modernization projects under the SFP are required to establish a restricted maintenance account to ensure that projects are kept in good repair. For a period of 20 years, districts that receive SFP funding are required to deposit no less than three percent of their general fund budget annually into the restricted maintenance account.[17] Small

[16] State Allocation Board, Annual Adjustment to School Facility Program Grants, State Allocation Board Meeting, January 27, 2010.

[17] Education Code section 17070.75.

districts may deposit less than three percent into the account if they can demonstrate an ability to maintain their facilities using a smaller amount of money.[18]

Modernization projects are also funded by the state on a per-pupil basis. The amount of the grant is determined by multiplying the number of students to be housed in a modernized building by a per-pupil grant that is adjusted annually by the SAB to account for changes in construction costs. As of January 27, 2010, the per-pupil grant amounts for modernization projects are as follows:

Elementary $3,738
Middle $3,520
High $4, 607
Special Day Class – Severe $10,600
Special Day Class – Non-Severe $7,092[19]

The funding application process for modernization projects is very similar to the process for new school construction. The application process consists of a single form, SAB 50-04, and a set of supporting documents that ensure the district has obtained DSA and CDE approval for its construction plans and obtained the requisite certifications. These certifications include: the establishment of a restricted maintenance account, verification that the building to be modernized was not previously modernized under the old Lease-Purchase Program, evidence that the district has obtained funding to meet its required 40 percent match for project costs, and approval from the Department of Industrial Relations for the district's Labor Compliance Program.

c) Financial Hardship

School districts unable to contribute some or all of the local matching funds required for new school construction and modernization projects may apply to the OPSC for financial hardship status.[20] If financial hardship status is granted, districts can receive up to 100 percent state funding for eligible new school construction and modernization projects. Districts seeking financial assistance must have their financial hardship status approved prior to submitting an application with the OPSC for funding. To qualify for financial hardship funding, a district must demonstrate the following: (1) it is levying developer fees up to the maximum amount allowed by law; (2) it has made every reasonable effort to raise local revenue to fund a project; and, (3) evidence of financial inability to contribute the required local matching funds.[21]

2. The Strict Accountability in Local School Construction Bonds Act of 2000[22]

The Strict Accountability in Local School Construction Bonds Act of 2000 was enacted as an alternative to issuing bonds pursuant to Education Code section 15120 *et seq*. or 15300 *et seq*. and was made operative contingent upon the passage of Proposition 39, which was approved at the November 2000 election. The Act allows for a reduced vote requirement of 55 percent (instead of two-thirds) for

[18] *Id.*

[19] State Allocation Board, Annual Adjustment to School Facility Program Grants, State Allocation Board Meeting, January 27, 2010.

[20] Education Code section 17075.10.

[21] *Ibid*.

[22] Specifically, Education Code sections 15271, 15272, 15274, 15276, 15278, 15280, 15282 and 15284.

approving a school district bond measure and imposes additional requirements on districts that issue bonds using the 55 percent vote. Specifically it:

- Provides that the governing board of a school district may, by a two-thirds vote of the board, place a school bonds measure on the ballot that only requires a vote of 55 percent of the electorate to authorize the bonds;[23]
- Provides that the 55 percent bond elections can only be at regularly scheduled state and local elections and statewide special elections;[24]
- Specifies that the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under the code that governs bonds authorized by a 66 percent vote;[25]
- Specifies that the total amount of bonds issued pursuant to 55 percent bonds shall not exceed 1.25 percent of the taxable property of the district and that the tax rate shall not exceed $30 per $100,000 of taxable property;[26]
- Provides that notwithstanding the general restriction to 1.25 percent of the taxable property of the district, any unified school district may issue 55 percent bonds not to exceed 2.5 percent of the taxable property of the district, not to exceed a tax rate of sixty dollars ($60) per one hundred thousand dollars ($100,000) of taxable property;[27]
- Specifies that a county board of education may not order an election to determine whether 55 percent bonds may be issued under this article to raise funds for a county office of education;[28]
- Provides that the 55 percent ballot shall also be printed with a statement that the board will appoint a "citizens' oversight committee" and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes;[29]
- Specifies that if the bonds are approved by the voters, the governing board of the school district shall establish and appoint members to the independent citizens' oversight committee within 60 days of the date that the governing board enters the election results on its minutes;[30]
- Specifies that the purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues and be active guardians of the public trust in ensuring the prudent expenditure of taxpayers' money for school construction. They shall ensure that no funds are used for any teacher or administrative salaries or other school operating expenses. In addition, the Act authorizes the committee to engage in any of the following activities:

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[23] Education Code section 15266.

[24] *Ibid*.

[25] *Ibid*.

[26] Education Code section 15268.

[27] Education Code section 15270.

[28] Education Code section 15276.

[29] Education Code section 15272.

[30] Education Code section 15278.

a) Receive and review copies of the annual, independent performance and financial audits required by the law authorizing 55 percent bonds;

b) Inspect school facilities and grounds to ensure that bond revenues are expended in compliance with law;

c) Receive and review copies of any deferred maintenance proposals or plans developed by a school district;

d) Review efforts by the school district to maximize bond revenues by implementing cost-saving measures;[31]

- Specifies that the governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee;[32]
- Specifies that: a) all committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board; b) the committee shall issue regular reports on the results of its activities; c) a report shall be issued at least once a year; and d) minutes of the proceedings of the committee and all documents received and reports issued shall be a matter of public record and be made available on the website maintained by the governing board;[33]
- Specifies that the citizens' oversight committee shall consist of at least seven members, as specified, to serve for a term of two years without compensation and for no more than two consecutive terms;[34]
- Specifies that no employee or official of the district or vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee,[35] and
- Provides for a cause of action for waste or misuse of bond funds. Provides for attorney fees. Establishes a law enforcement priority for investigation and prosecution for waste or misuse of bond funds.[36]

3. The Issuance of Bonds by School Facility Improvement Districts

Education Code section 15300 *et seq*. provides authority for the formation of a school facilities improvement district, consisting of a portion of the territory of a school district, and for the issuance of general obligation bonds by the district. Both the county board of supervisors and the school district must approve the formation of the district. If the county board of supervisors for the county in which the district is located adopts Part 10, Chapter 2 of the Education Code relating to the establishment of school facilities improvement districts,[37] and the governing board of a school district chooses to

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[31] *Ibid*.

[32] Education Code section 15280.

[33] *Ibid*.

[34] Education Code section 15282.

[35] *Ibid*.

[36] Education Code section 15284.

[37] See Education Code section 15303.

exercise the authority to establish a school facilities improvement district, the district is required to comply with the requirements imposed by Part 10, Chapter 2 of the Education Code. The decision to establish a school facilities improvement district triggers: necessary findings and filing requirements, noticing and hearing requirements and the requirement to adopt a resolution to form the district.[38] With the exception of any activities relating to the initial approval of the county board of supervisors to establish the school facilities improvement district, the resulting requirements are imposed on the school district.

The school facilities improvement district may only issue bonds for specified purposes, which generally include purchasing real property for school facilities, building new school facilities or making improvements to existing school facilities.[39] There are also limitations imposed on the amount of bonds that may be issued based on the taxable property in the district and the amount of indebtedness and there is a process set out in statute for how to assess those limits.[40] If the school facilities improvement district places a bond measure on the ballot, it must abide by the requirements for holding a bond election including the specific information required to be included in the proposition statement and the certification of election results.[41]

If the voters approve the bond measure, the board of supervisors of the county in which the school facilities improvement district is located shall offer the bonds for sale.[42] Education Code sections 15351-15422 generally provide the requirements for the issuance and sale of the bonds, the required form of the bonds, cancellation of unsold bonds, the purchase of bonds by issuing school districts, method of bond payment, and tax for payment of bonds.

Education Code section 15335 provides a process for commencement of an action to determine the validity of bonds and the ordering of the improvement or acquisition. A school facilities improvement district that chooses to issue bonds is required to report the amount of the bond issue, indebtedness, the percentage of qualified electors who voted, and the results of the election with the percentage of votes cast for and against the proposition.[43]

4. The State Relocatable Classroom Law of 1979[44]

The State Relocatable Classroom Law of 1979 requires the State Allocation Board (SAB) to lease portable classrooms to qualifying school districts and county superintendents of schools, as specified. It also authorizes any qualifying school district, or a joint power of one or more school districts or county superintendents of schools, to purchase portable classrooms, as specified. Specifically:

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[38] See Education Code sections 15320, 15321, 15322, 15323, 15324, 15325, 15326 and 15327.

[39] Education Code section 15302.

[40] See Education Code sections 15330, 15331, 15332, 15333, 15334 and 15334.5.

[41] See Education Code sections 15340 - 15349.2.

[42] Education Code section 15350. Note that pursuant to Education Code section 15303, a resolution by this same board of supervisors is required to make this chapter applicable in the county.

[43] Education Code section 15336.

[44] Specifically, Education Code sections 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, and 17096.

- Education Code section 17088.3 provides the requirements for a district to qualify for a lease.
- Education Code section 17088.5 authorizes the SAB to empower a lessee as an agent of the Board and to authorize a district or superintendent to purchase portable classrooms, subject to specified conditions, when funds are unavailable to the SAB.
- Education Code section 17088.7 outlines the eligibility, costs and procedures for purchasing and leasing portable classrooms.
- Education Code section 17089 provides a range of costs for leasing a portable classroom and requires that the lessee undertake (and bear the costs of) all necessary maintenance, repairs, renewal, and replacement to ensure that it is at all times kept in good repair, working order and condition.
- Education Code section 17089.2 authorizes a district or county superintendent to purchase a portable classroom that it is leasing from the SAB for the price that SAB paid for it, less the amount of rent already paid.
- Education Code section 17090 requires lessees to insure (in an amount that the SAB deems necessary to protect the interest of the state) any leased portable classroom at their own expense for the benefit of the state, payable to the SAB for the State School Building Aid Fund.
- Education Code section 17092 restricts eligibility for portable classrooms to those districts that demonstrate to the SAB that they have no bond funds available to purchase classroom facilities except that where a district or county superintendent has received approval for a project that includes a justified number of new teaching stations, it is eligible for at least the same number of portable classrooms as approved new teaching stations. Section 17092 exempts leases and subleases for licensed child care programs or any recreation or enrichment activities or programs for school age children.
- Education Code section 17096 requires that leases of portable classrooms must require a telephone installed in each portable classroom at the time of installation of the portable classroom.

5. Issuance of School District Revenue Bonds Pursuant to Part 10, Chapter 15 of the Education Code[45]

Education Code sections 17110 and 17111 authorize school districts to issue revenue bonds to finance joint occupancy facilities (i.e. properties jointly occupied by a school district and a private entity) and to contract with any person, firm, partnership, joint venture, or other private entity for the purposes of issuing the bonds or renting or leasing the facilities. Proceeds from the rental and lease of the facilities are required to be used by the district to repay the revenue bonds.

6. Public Disclosure of Non-Voter-Approved Debt[46]

Education Code section 17150, subdivision (a) requires a district that approves the issuance of revenue bonds or enters into an agreement for financing school construction, pursuant to Chapter 18 (commencing with section 17170), to notify the county superintendent of schools and the county auditor. The superintendent of the schools district is required to provide the repayment schedule for the debt and evidence of the school's ability to repay the debt to the county auditor, the county

[45] Specifically, Education Code sections 17110 and 17111.

[46] Specifically, Education Code section 17150.

superintendent and the public. Subdivision (b) provides nearly identical requirements for a county board of education (except that notice is given to the governing board rather than the county auditor). The county auditor and the county superintendent may publicly comment on the repayment capability issue within 15 days of receipt of the information.

7. California School Finance Authority Act, Part 10, Chapter 18 of the Education Code[47]

The California School Finance Authority Act provides for the powers of the California School Finance Authority (CSFA).[48] CSFA consists of the following three members: the State Treasurer who serves as chair, the Superintendent of Public Instruction, and the Director of DOF.

CSFA oversees the statewide system for the sale of revenue bonds to reconstruct, remodel or replace existing school buildings, and to acquire new school sites and buildings to be made available to public school districts, charter schools, and community colleges, and to provide access to financing for working capital and capital improvements. The bond funding provided to public school districts though this program is sort of a hybrid in that the state issues the bonds but the funding is loaned to school districts (rather than granted) and is generally repaid with school district's Proposition 98 funds. In recent times, very little public school construction has been funding though CSFA.[49] Rather, CSFA has been primarily providing funding to charter schools and community colleges.[50]

Only financially feasible projects are intended to be funded by the CSFA and a school district may take into account all of its funds, and may base future projections upon historical experience or reasonable expectations, or a combination thereof in demonstrating feasibility.[51] The Controller is authorized, upon receipt of a deficiency notice from any school district or county office of education, to make specified apportionments to trustees. However, public credit providers may impose certain requirements on schools districts as a condition of providing credit enhancement for bonds, notes, certificates of participation, or other evidence of indebtedness of the district.[52] Specifically, the public credit provider can require a credit enhancement agreement that requires the Controller to allocate the apportionments to a public credit provider rather than the trustee.[53] If a district votes to participate under Education Code section 17193.5, it is required to provide a notice to the Controller that includes a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness, and to identify the public credit provider that provided credit enhancement not later than the date of issuance of the bonds.

CSFA may authorize a participating school district to act as its agent in the performance of acts specifically approved by the authority, and all acts required under Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.[54] CSFA is also authorized to purchase the rights and possibilities[55]

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[47] Specifically, Education Code sections 17180, 17183.5, 17193.5, 1794, 17199.1, and 17199.4.

[48] Education Code section 17180.

[49] See the 2009-2010 State Budget, item 0985.

[50] *Ibid*.

[51] Education Code section 17183.5.

[52] *Ibid.*

[53] *Ibid.*

[54] Education Code section 17194.

[55] A "possibility" is a contingent interest in real or personal estate.

regarding funding for school facilities approved by the SAB pursuant to the Leroy F. Greene School Facilities Act of 1998, including amounts apportioned and funded and amounts approved but not yet funded.[56] However, the authorization of the CSFA is limited to making or purchasing those secured or unsecured loans or to purchasing those rights and possibilities to those loans and rights and possibilities regarding the state's share of funding, for school facilities provided under the Greene Act.[57] There is also a limit to amounts approved and funded or amounts approved but not yet funded from proceeds of state bonds already authorized by the electors but not yet issued.[58]

8. Hazardous Material Assessment (HMA) and Related Statutes Overview[59]

HMAs are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. All proposed school sites which will receive state funding for acquisition or construction are required to go through a comprehensive environmental review and cleanup process under DTSC oversight.[60]

A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a PEA is required to evaluate the threat posed to public health or the environment. The California Education Code requires DTSC to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.[61] School districts may elect to proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.[62]

School districts are eligible for reimbursement from the state for 50 percent of the cost of the Phase I Assessment and PEA and 50 percent of the response costs for removal of hazardous waste or other remedial action in connection with hazardous substances at that site. Reimbursement is capped at 50 percent of 1½ times the appraised value of the uncontaminated site (higher in instances of extreme need). Districts that qualify for financial hardship status may obtain funding for up to 100 percent of the cost of the evaluation of hazardous materials and the response costs at a site, subject to the appraised-value cap.[63]

a) Phase I Assessments

When a school district finds a site that it believes may be suitable for a new school or decides to make an addition to an existing school that would increase student capacity by 25 percent or more, it must prepare a Phase I Assessment. A Phase I Assessment is a historical search of records to evaluate past

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[56] Education Code section 17199.1.

[57] *Ibid.*

[58] *Ibid.*

[59] Specifically, Education Code sections 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2; Health and Safety Code sections 25358.7, 25358.7.1 and Public Resources Code section 21151.4 and 21151.8.

[60] See Public Resources Code sections 21000 *et seq.* and Education Code sections 17210 *et seq.*

[61] Education Code section 17213.2.

[62] Education Code section 17213.1.

[63] Education Code section 17213.1, subdivision (b).

site uses and identify "recognized environmental conditions" at the prospective school site.[64] The environmental assessor reviews records to determine if the property may pose any risk of exposures to hazardous materials (such as pesticides, metals, minerals, gases, radioactive elements, PCBs, petroleum-related chemicals, or unexploded ordnances) utilizing the American Society for Testing and Materials Standard E1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. The Phase I Assessment includes a site map (showing site boundaries and figures), a description of land uses (past, current and future), and an evaluation of all sources for the potential release or presence of hazardous material (including naturally occurring hazardous material). The school district submits this assessment for DTSC review, comment, and approval, along with a fee. DTSC provides comments and makes a determination within 30 days. If there is no potential contamination, DTSC will issue a "No Further Action" determination, and the HMA process is complete.[65] A completed Phase I Assessment is generally not made available for a period of public review and comment.

Section 21083 of the Public Resource Code exempts from the Phase I Assessment requirement any addition to a school that is minor under the CEQA Guidelines. California Code of Regulations, title 14, section 15314 defines “minor” as any project that does not increase original student capacity by more than 25 percent or ten classrooms, whichever is less. Portable classrooms, including when intended for permanent use, are included in this exemption.

b) Preliminary Endangerment Assessments

If the Phase I Assessment reveals potential contamination, DTSC will issue a determination of "Preliminary Endangerment Assessment (PEA) Required" (also known as a Phase II). Before starting a PEA, the school district will enter into an Environmental Oversight Agreement to follow DTSC's direction for site investigation, and to pay DTSC's projected oversight costs.[66] The school district's environmental assessor will conduct an investigation, and prepare a PEA, including environmental sampling and analysis data, and a risk assessment. The PEA must be made available for public review and comment before it is finalized.[67] This may be done as a part of the Environmental Impact Report (EIR) comment period required pursuant to CEQA or separately, at the discretion of the school district.[68] DTSC approves or disapproves the PEA within 30 days after the close of the public comment period for the PEA, or within 30 days of the school district's approval of the EIR for the school site.[69] If the PEA identifies no significant health or environmental risks, the district will receive a "No Further Action" determination from DTSC.[70]

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[64] Education Code section 17210.

[65] Education Code section 17213.1, subdivision, (a)(2).

[66] See generally Education Code sections 17210, subdivision (b) and 17213.1, subdivision (a)(4)(B).

[67] Education Code section 17213.1, subdivision, (a)(6).

[68] *Ibid*.

[69] *Ibid*.

[70] Education Code section 17213.1, subdivision, (a)(9).

c) CEQA[71]

CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions that can be found in CEQA and the CEQA regulations. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR). If the EIR includes findings of significant environmental impacts, CEQA imposes a substantive requirement to adopt feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.[72] The purposes of CEQA are to:

- inform decision makers and the public about project impacts;
- identify ways to avoid or significantly reduce environmental damage;
- prevent environmental damage by requiring feasible alternatives or mitigation measures;
- disclose to the public reasons why an agency approved a project if significant environmental effects are involved;
- involve public agencies in the process; and,
- increase public participation in the environmental review and the planning processes.[73]

The EIR requirement, which effectively accomplishes the above purposes, is "the heart of CEQA."[74]

Public Resources Code sections 21151.4 prohibits approval of a ND or EIR for a project within ¼ mile of a school, which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle an acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than a specified quantity, which may pose a health or safety hazard to persons who would attend or would be employed at the school, unless:

(a) The lead agency preparing the EIR or ND has consulted with the school district having jurisdiction regarding the potential impact of the project on the school, and

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the EIR or ND.

The Legislature enacted Public Resources Code section 21151.4 and related code sections because of:

> …. incidents of health threats and nuisances at schoolsites throughout the state causing children to evacuate schools, report ill, and require medical attention. These incidents

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[71] On September 30, 2010, the Commission adopted a Statement of Decision (03-TC-17) denying reimbursement to school districts for the majority of the statutory and regulatory sections that make up CEQA because the requirement to comply with CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project. However, the two CEQA code sections pled in this test claim, Public Resources Code sections 21151.4 and 21151.8, were not pled in 03-tc-17.

[72] Public Resources Code section 21002.

[73] Public Resources Code section 21002, California Code of Regulations, title 14, section 15002.

[74] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

have been caused in large part by the inappropriate siting of schools and certain facilities with the potential for routine and accidental releases of hazardous and acutely hazardous air emissions.[75]

Section 21151.8 prohibits certification of an EIR or approval of an ND for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless:

(a) The EIR or ND includes an analysis of whether the proposed site is or was a hazardous waste or solid waste disposal site, is a hazardous substance release site, or contains pipelines carrying hazardous substances, acutely hazardous materials, or hazardous wastes and if so, provides an analysis of the hazardous substances on the site. The district must also make certain findings on the hazardous substances before approving the acquisition.

(b) The district consults with the local air pollution district to ascertain whether any facilities within a quarter mile of a proposed site might emit hazardous materials, substances or waste. Facilities that must be considered include, but are not limited to: freeways, busy traffic corridors, railyards, and large agricultural facilities.[76]

d) Hazardous Substance Account Act

The Hazardous Substance Account Act (HSAA) which includes Health and Safety Code sections 25358.1 and 25358.7.1 as added by Statutes 1999, chapter 23, is California's equivalent to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA, (commonly known as "Superfund"). HSAA is a 1980 law passed to address the cleanup of abandoned toxic waste sites. DTSC administers CERCLA, which is implemented in California through HSAA and related regulations. HSAA assigns liability for each site, funds the cleanup of that site from a fund created from taxes and fines levied on the site's polluters, and imposes requirements on affected property owners and potentially responsible parties and a number of related requirements on state agencies. Specifically, Health and Safety Code section 25358.1 imposes disclosure requirements on "any potentially responsible party, or any person who has, or may have, acquired information relevant to [specified hazardous substance release related questions] in the course of a commercial, ownership, or contractual relationship with any potentially responsible party."

Additionally, owners of nonresidential property must provide information to buyers, lessees or renters regarding hazardous substances that have or may have been released on the property. Failure to provide such information subjects owners to penalties. HSAA further provides that owners are responsible for the cleanup of such sites, and the removal of toxic substances, where possible. Health and Safety Code section 25358.7.1 allows the affected community to form a community advisory group "to review any response action and comment on the response action to be conducted in that community." It also requires DTSC (or the regional water quality control board in some instances) to regularly communicate, and confer as appropriate, with the community advisory committee.

[75] Statutes 1988, chapter 1589 (SB 3205), section 1.

[76] Note that these requirements are identical to the requirements of former Education Code section 39003, which was repealed by Statutes 1996, chapter 277 (SB 1572), which was an omnibus bill that reorganized the Education Code.

e) State Site Standards and Certificates of Compliance[77]

Education Code section 17251 requires the Department of Education (DOE) to:

- Advise any school district, upon request, on the acquisition of new schoolsites and give the governing board in writing a list of the recommended locations in the order of their merit considering educational, environmental, and planning and zoning issues. The district may purchase a site deemed unsuitable for school purposes by DOE after reviewing DOE's report on proposed sites at a public hearing. The DOE is required to charge the school district a reasonable fee for each schoolsite reviewed not to exceed the actual administrative costs incurred for that purpose.
- Develop standards for use by a school district in the selection of schoolsites and investigate complaints of noncompliance with site selection standards. DOE is required to notify the school district of the results of the investigation and if the notification is received prior to the acquisition of the site, the governing board is required to discuss the findings of the investigation in a public hearing.
- Establish standards for use by school districts to ensure that the design and construction of school facilities are educationally appropriate and promote school safety.
- Upon the request of any school district, review plans and specifications for school buildings in the district. DOE is required to charge school districts, for the review of plans and specifications, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.
- Upon the request of any school district, survey the building needs of the district, advise and suggest plans for financing a building program to meet the needs. DOE is required to charge the district, for the cost of the survey, a reasonable fee not to exceed the actual administrative costs incurred for that purpose.
- Provide information relating to the impact or potential impact upon any schoolsite of hazardous substances, solid waste, safety, or hazardous air emissions, and other information as DOE may deem appropriate.

Education Code section 17315 requires the Department of General Services (DGS) to issue a certificate of compliance only after a school building constructed in accordance with plans and specifications approved by DGS is completed, the CEQA notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by Education Code sections 17280-17317 and related regulations, are submitted to and on file with DGS, and all required fees paid by the school district. It also makes provisions for the issuance of a certificate of compliance where a final verified report is missing due to the incapacitating illness, death, or the default of any persons required to file such reports. The costs incurred by DGS in connection with this section are required to be paid by the school district. The actual costs to perform the examinations, tests and inspections are designated by section 17315 as an appropriate cost of the project to be paid from the building funds of the district.

[77] Specifically Education Code sections 17251 and 17315.

II. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant generally alleges that all of the activities it must perform to receive state funding or to issue local bonds for school facility projects (i.e. new building, modernization and renovation), including the requirement to pay a local share of costs, are new and reimbursable under article XIII B, section 6 of the California Constitution. In essence, claimant is alleging that the state is legally required to provide 100 percent of funding for all school facility project related costs, including all of the environmental compliance, accountability and public notice requirements for the issuance of local bonds and other related costs pled in this consolidated test claim.

In *School Facilities Financing Requirements* (02-TC-30), claimant alleges reimbursable state-mandated costs to school districts "[f]or programs, policies and procedures that school districts must comply with in order to receive state funded bond money for new construction, renovation and modernization projects. In *Hazardous Materials Assessments* (02-TC-43) claimant alleges reimbursable state-mandated costs for school districts to perform hazardous materials assessments (HMAs) and related activities. In particular, claimant alleges state-mandated costs for the performance of activities related to:

1. Receipt of State Grants

- The receipt of state funds for new construction or modernization of school facilities pursuant to the Leroy F. Greene School Facilities Act of 1998, Part 10, chapter 12 of the Education Code, or the Kindergarten-University Public Education Facilities Bond Act of 2002, Part 68.1, Chapter 2;[78]
- The requirement to prepare HMAs pursuant to Education Code, Title 1, Division 1, Part 10.5 and related statutes under specified circumstances;[79]
- Compliance with state site standards and obtaining a certificate of compliance with Department of General Services (DGS) approved plans and specifications;[80]

[78] Specifically, Education Code sections 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036,17038, 17040, 17040.1, 17040.2, 17040.3, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 1706417065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25 and 100620.

[79] Specifically, Education Code sections 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, and 17213.2; Health and Safety Code sections 25358.7 and 25358.7.1; and Public Resources Code sections 21151.4 and 21151.8.

[80] Specifically, compliance with Education Code sections 17251 and 17315.

2. Issuance of Local Bonds

- The issuance of local school construction bonds pursuant to the Strict Accountability in Local School Construction Bonds Act of 2000, Part 10, Chapter 1.5 of the Education Code;[81]
- The issuance of local school construction bonds by school facilities improvement districts pursuant to Part 10, Chapter 2 of the Education Code;[82]
- The issuance of district revenue bonds by school districts pursuant to Part 10, Chapter 15 of the Education Code;[83]
- The public disclosure of non-voter-approved debt pursuant to Part 10, Chapter 16 of the Education Code;[84]

3. Participation in Other State Programs

- The lease of portable classrooms from the SAB pursuant to the Emergency School (State Relocatable) Classroom Law of 1979, Part 10, Chapter 14 of the Education Code;[85]and,
- California School Finance Authority Act, Part 10, Chapter 18 of the Education Code.[86]

More specifically, in *Hazardous Materials Assessments* (02-TC-43) claimant alleges reimbursable state-mandated costs to school districts for the following HMA related activities:

A. Developing and implementing policies and procedures, and periodically revising those policies and procedures, and compliance with all requirements relative to the discovery and removal of hazardous materials at proposed schoolsites pursuant to Article 1 of Chapter 1, commencing with Education Code section 17210 and related sections;[87]

B. Funding 50 percent, or more, of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and 50 percent, or more, of the other response action costs for the removal of hazardous waste or solid waste, the removal of hazardous substances, or other response action in connection with hazardous substances at proposed schoolsites pursuant to Education Code section 17072.13, subdivision (a);[88]

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[81] Specifically, Education Code sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, and 15284.

[82] Specifically, Education Code sections 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, and 15391.

[83] Specifically, Education Code sections 17110 and 17111.

[84] Specifically, Education Code section 17150.

[85] Specifically, Education Code sections 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, and 17096.

[86] Specifically, Education Code sections 17180, 17183.5, 17193.5, 17194, 17199.1, and 17199.4.

[87] Note that there is no reference to policies and procedures in this portion of the code, though a district may certainly find it helpful to have policies and procedures in place.

[88] Note that based on a plain meaning reading of Education Code Section 17072.13, subdivision (a), it is the State Allocation Board (i.e. the state), not the school district that provides 50 percent or more (up

C. For school districts eligible for financial hardship assistance pursuant to Article 8 (commencing with Section 17075.10), funding the balance of the cost of the evaluation of hazardous materials at a site to be acquired by a school district and for the other response action costs for the site not funded by the State Allocation Board pursuant to Education Code section 17072.13, subdivision (b);

D. Focusing on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, when conducting risk assessments at prospective schoolsites pursuant to Education Code section 17210.1, subdivision (a)(3);

E. When taking response actions pursuant to the article to be, at a minimum, protective of children's health, with an ample margin of safety, pursuant to Education Code section 17210.1, subdivision (a)(4);

F. Providing a notice to residents in the immediate area prior to the commencement of work on a PEA utilizing a format developed by DTSC, pursuant to Education Code section 17210.1, subdivision (b);

G. Evaluating the real property for a new schoolsite, or an addition to an existing schoolsite, at a public hearing pursuant to Education Code Section 17211, using site selection standards established by DOE (DOE) pursuant to Section 17251, subdivision (b), prior to commencing the acquisition of that real property;

H. Prior to acquiring any site on which it proposes to construct any school building, investigating the site, or sites, under consideration by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only pursuant to Education Code section 17212 and including location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project;

I. If the prospective schoolsite is located within the boundaries of any special studies zone, or within an area designated as geologically hazardous in the safety element of the local general plan as provided in Government Code Section 65302, subdivision (g), including any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage in the investigation pursuant to Education Code section 17212;

J. Making geological and soil engineering studies, as described in Section 17212, for the reconstruction, or alteration of, or addition to, any school building for work which alters structural elements if the estimated cost exceeds $25,000, or as increased according to a construction costs inflation index recognized by DGS pursuant to Education Code section 17212.5;

K. Making geological and soil engineering studies, as described in Section 17212, when required by DGS for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone pursuant to Education Code section 17212.5;

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to 100 percent for hardship) of the funding. The school district may be required to provide up to 50 percent of these costs, if it is not a hardship district.

L. Submitting to DGS and DOE a copy of the report of each investigation conducted pursuant to Article 3 (commencing with Section 17280) as required by Education Code section 17212.5;

M. Verifying, prior to approval of a project, that the lead agency, as defined in section 21067 of the Public Resources Code, has determined that the property purchased or to be built upon is not any of the following:

1. The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed;

2. A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code;

3. A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood pursuant to Education Code section 17213, subdivision (a);

N. Verifying, prior to approval of a project, that the lead agency, as defined in section 21067 of the Public Resources Code, has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste and has included a list of the locations for which information was sought pursuant to Education Code section 17213, subdivision (b);

O. Prior to approval of a project, making one of the following written findings:

1. Consultation identified none of the facilities specified in subdivision (b).

2. The facilities specified in subdivision (b) exist, but one of the following conditions applies:

a. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

b. The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels pursuant to Education Code section 17213, subdivision (b).

P. Pursuant to Education Code section 17213.1, subdivision (a), prior to acquiring a schoolsite, contracting with an environmental assessor to supervise the preparation of, and sign, a Phase I Assessment of the proposed schoolsite unless the governing board decides to proceed directly to a PEA. The Phase I Assessment shall contain one of the following recommendations:

1. A further investigation of the site is not required; or,
2. A PEA is needed, including sampling or testing;

Q. Pursuant to Education Code section 17213.1, subdivision (a)(2), if the Phase I Assessment concludes that further investigation of the site is not required, submitting the signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of section 17210, and the required fee to DTSC;

R. If DTSC determines that the Phase I Assessment is not complete, or disapproves the Phase I Assessment, taking actions necessary to secure the approval of the Phase I Assessment, elect to conduct a PEA, or electing not to pursue the acquisition or the construction project pursuant to Education Code section 17213.1, subdivision (a)(3);

S. If DTSC concludes, after its review of a Phase I Assessment pursuant to this section that a PEA is needed (or when a district elects to forego a Phase I Assessment and proceed directly to a PEA), submitting to the DOE the Phase I Assessment and requested additional information, if any, that was reviewed by DTSC Pursuant to Education Code section 17213.1, subdivision (a)(4)(A);

T. If the Phase I Assessment concludes that a PEA is needed, or if DTSC concludes after it reviews a Phase I Assessment pursuant to this section that a PEA is needed, contracting with an environmental assessor to supervise the preparation of, and sign, a PEA of the proposed schoolsite and entering into an agreement with DTSC to oversee the preparation of the PEA or electing not to pursue the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(4)(B). The PEA shall contain one of the following conclusions:

1. A further investigation of the site is not required; or
2. A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof;

U. Submitting the PEA to DTSC for its review and approval and to DOE for its files pursuant to Education Code section 17213.1, subdivision (a)(5);

V. At the same time a school district submits a PEA to DTSC, publishing a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and posting the notice in a prominent manner at the proposed schoolsite that is the subject of that notice pursuant to Education Code section 17213.1, subdivision (a)(6). The notice shall state the school district's determination to make the PEA available for public review and comment;

W. Complying with the public participation requirements of sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a PEA are required and the district determines that it will proceed with the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(7);

X. If DTSC disapproves the PEA, taking actions necessary to secure the approval of DTSC of the PEA or electing not to pursue the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(8);

Y. If the PEA determines that a further investigation of the site is not required and DTSC approves this determination, then proceeding with the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(9);

Z. If the PEA determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and DTSC approves this determination, either electing not to pursue the acquisition or construction project, or, electing to pursue the acquisition or construction project pursuant to Education Code section 17213.1, subdivision (a)(10). If electing to pursue the acquisition, doing all of the following:

1. Preparing a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite;
2. Assessing the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any;
3. Obtaining the approval of DOE that the proposed schoolsite meets the schoolsite selection standards adopted by DOE pursuant to subdivision (b) of section 17251;
4. Evaluating the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of DOE, based upon the standards of DOE, pursuant to subdivision (a) of section 17251;

AA. Reimbursing DTSC for all of the department's response costs pursuant to Education Code section 17213.1, subdivision (a)(11);

BB. If a PEA prepared pursuant to section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, entering into an agreement with DTSC to oversee response action at the site and taking response action pursuant to the requirements of the state act as may be required by DTSC pursuant to Education Code section 17213.2, subdivision (a);

CC. If at any time during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, notifying DOE pursuant to Education Code section 17213.2, subdivision (c);

DD. Before occupying a school building following construction, obtaining from DTSC a certification that all response actions, except for operation and maintenance activities, necessary to ensure that hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed, and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained, pursuant to Education Code section 17213.2, subdivision (d)(2);

EE. If, at anytime during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered:

1. Ceasing all construction activities at the sites;
2. Notifying DTSC, and taking actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials; and

3. Resuming construction only if DTSC:

    a. Determines that:

        i. The construction will not interfere with any response action necessary to address the hazardous material release or threatened release or the presence of a naturally occurring hazardous material; and

        ii. The site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the schoolsite; and

    b. Certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.[89]

FF. Reimbursing DTSC for all response costs incurred by the department pursuant to Education Code section 17213.2, subdivision (h);

GG. Reimbursing DOE for fees incurred and charged for advising the governing board on the acquisition of new schoolsites and, after a review of available plots, giving the governing board, in writing, a list of the recommended locations in the order of their merit, considering especially the matters of educational merit, safety, reduction of traffic hazards, and conformity to the land use element in the general plan of the city, county, or city and county having jurisdiction pursuant to Education Code section 17251, subdivision (a);

HH. Complying with standards developed by DOE to be used in the selection of schoolsites, in accordance with the objectives set forth in Education Code section 17251subdivision (a), pursuant to Education Code section 17251, subdivision (b). If notification is received prior to the acquisition of the site that the department has investigated complaints of noncompliance with site selection standards, discussing the findings of the investigation in a public hearing;

II. Complying with standards established by DOE for use by school districts to ensure that the design and construction of school facilities are educationally appropriate and promote school safety pursuant to Education Code section 17251, subdivision (c);

JJ. Reimbursing the DOE for the review of plans and specifications Pursuant to Education Code section 17251, subdivision (d);

KK. Reimbursing DOE for making a survey of the building needs of the district, advising the governing board concerning building needs, and suggesting plans for financing a building program to meet the needs pursuant to Education Code section 17251, subdivision (e);

LL. Filing the notice of completion, submitting all final verified reports and all testing and inspection documents, and paying all required fees when a school building is constructed in accordance with plans and specifications approved by DGS pursuant to Education Code section 17315, subdivision (a);

MM. When a school building constructed in accordance with approved plans and specifications is completed but final verified reports, as are required under section 39151, have not been submitted to DGS due to the incapacitating illness, death, or the default of any persons required to file such reports, requesting DGS to review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of the article pursuant to Education Code section 17315,

[89] Education Code Section 17213.2, subdivision (e).

subdivision (b). When requested by the DGS making, reporting, and verifying any other tests and inspections which the department deems necessary to complete its examinations of the construction;

NN. Reimbursing the costs incurred by the DGS to perform the examinations, tests, and inspections required by the section pursuant to Education Code section 17315, subdivision (c).

In its amendment to the consolidated test claim (09-TC-01) claimant alleges the following statutes contain reimbursable mandates: Health and Safety Code sections 25358.7 and 25358.7.1,[90] Education Code sections 39003 and 39120,[91] Public Resources Code section 21151.4, section 17,[92] and, Public Resources Code section 21151.8, section 18.[93] Claimant doesn't specify what activities are reimbursable except that it cut and pastes all of the pled statutes into the "narrative" and "declaration" and then includes copies of the statutes as required by Commission's test claim form.[94]

Claimant disagrees with the argument put forth by DOF[95], DOE[96] and DTSC[97] that a school district's participation in the underlying programs at issue are elective or optional and neither a compulsory nor practically compelled. Claimant cites to the following to demonstrate that it is required to participate in the underlying programs:

1. *Butt v. State of California*, which discusses the duty of the Legislature to "provide for a system of common schools, by which a school be kept up and supported in each district."[98]

2. A report of the California Research Bureau which states in part that one challenge public schools face "[i]s the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning

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[90] As amended by Statutes 1999, chapter 23 (SB 47). These sections generally require DTSC or the Regional Board, in response actions, to inform the public and establish community advisory groups.

[91] As added by Statutes 1991 (AB 928), chapter 1183. These sections were repealed by Statutes 1996, chapter 277 (SB 1562).

[92] As amended by Statutes 2004, chapter 689 (SB 945), Statutes 2008, chapter 148 (AB 2720).

[93] As amended by Statutes 2003, chapter 668 (SB 352), Statutes 2007, chapter 130 (AB 299), and Statutes 2008, chapter 148 (AB 2720). These sections link the CEQA process to the HMA process and require consultation with the school district for the siting of hazardous facilities within ¼ mile of a school.

[94] For an in depth description of what these statutes require, please see background above.

[95] DOF comments on 02-TC-43, p.1.

[96] DOE, comments on 02-TC-30, p. 1.

[97] DTSC, comments on 02-TC-43, *supra*, p.p. 1, 2, 3, 4, 8 and 9 and DTSC, rebuttal to claimant's response on 02-TC-43, *supra*, p.p. 2 and 3.

[98] Claimant, response to DOF comments and claimant, response to DTSC memorandum for 02-TC-43 and, *supra*, p. 2, citing *Butt v. State of California* (1992) 4 Cal. 4th 668, p. 680. Note that claimant makes the same arguments in its response to DOF comments on 02-TC-30, but for the ease of the reader, this analysis will cite to the response to DOF and DTSC comments for 02-TC-43.

student demand."[99] That report also discusses the shortfall of available funds to meet the need for public school construction and rehabilitation.

3. The March 2004 Proposition 55 ballot information pamphlet which discusses the "need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils."[100]

Claimant states that "a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate"[101] and discusses the case law regarding practical compulsion. Claimant concludes that "[i]n light of the finding that there is a need to construct new schools to house 1.1 million pupils and the need to modernize schools for an additional 1.1 million pupils, it is beyond the realm of practical reason to opportunistically argue that there is no state law or regulation which requires a school district to construct additional school facilities or acquire any site for the purpose of constructing a school building."[102]

Finally, claimant disagrees with DOF's position that Education Code Part 1, Chapter 6, Title 1, Division 1 provides schools with authority to impose development fees and therefore Government Code section 17556, subdivision (d) prohibits reimbursement for any state-mandated activities. Claimant argues: "Government Code section 17556(d) refers to 'service charges, fees or assessments.' Education Code 17620 refers to a 'fee, charge, dedication or other requirement.' They are not the same."[103] Claimant includes a discussion of the limitations on the purposes for which a "fee, charge or dedication" may be used (i.e. to fund the construction or reconstruction of school facilities but not for maintenance) pursuant to Education Code section 17620, subdivision (a)(1).

B. Department of Toxic Substances Control's Position

DTSC submitted comments on the test claim filing for 02-TC-43 (*Hazardous Materials Assessments*) on October 27, 2003 and a rebuttal to claimant's response to its October 27, 2003 comments on February 6, 2004.

1. School Districts are not Legally or Practically Compelled to Meet HMA Requirements

With regard to HMAs, DTSC states that "district participation in the underlying program is elective or optional."[104] Specifically, DTSC states that Education Code section 17210.1 "expressly addresses only sites for which 'school districts elect to receive state funds'" and "Education Code section 17213.1 also states, '[a]s a condition of receiving state funding' and clearly applies these requirements to districts

[99] Claimant, response to DOF comments, p. 3, citing Cohen, *supra*. Note however, that according to California Department of Education, Educational Demographics Unit, from school year 1999-2000 to 2008-2009, the most recent year for which there is data, actual enrollment went up only by 300,419 students, less than 1/6 of the projected number.

[100] *Id*, p. 3. Note that the claimant has taken this quote somewhat out of context in that it actually says "… *the districts have identified* the need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils." (Emphasis added.)

[101] *Id*, p. 4.

[102] *Id*, p. 7.

[103] Claimant, response to DOF comments on 02-TC-43, *supra*, p. 9.

[104] DTSC, comments on 2-TC-43, October 27, 2003, p.1 (citing *Kern*.)

seeking state funding of their projects."[105] DTSC states that "[t]he [claimant] also fails to mention that there is existing state funding for all or a part of the hazard assessment work under Education Code sections 17072.12 and 17072.13 that reduces the unfunded costs or invalidates their grounds for reimbursement as an unfunded mandate."[106] DTSC argues that the state-funded School Facilities Program conditions in this test claim are analogous to the state-funded educational programs at issue in *Kern*.[107] Specifically:

> The hazard assessments requirements are not rendered mandates because the state funds only a part of the total costs under Education Code sections 17072.1, 17213.13 and 17213.18. The [*Kern*] court noted, "[w]e reject the suggestion, implicit in claimants' argument that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring school districts to incur expenses in order to meet conditions of program participation." [108]

DTSC also argues that school districts are not practically compelled (using the phrase "compelled de facto") because though there may be no feasible alternative to participation in the state funding program for school construction projects where HMA costs are sizable, "districts may elect to stop pursuing such a high cost site at any time without compulsion or penalty."[109]

2. School Districts Have Sufficient Fee Authority to Fund Their Share of Costs and are Thus Disqualified for Reimbursement Under Government Code section 17556, subdivision (d).

DTSC argues, "school districts have authority to levy fees to fund their share of costs under Government Code section 17556, subdivision (d), and *Connell v. Superior Court* (1997) 59 Cal.App.4th 382." [110] DTSC points out that Government Code section 17556, subdivision (d), prohibits the Commission from determining costs are mandated by the state if it finds that the district "has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."[111] DTSC refers to Education Code section 17620 (development fee), Government Code section 53311 (Mello-Roos fee), and Education Code section 15350 (school facilities improvement districts bond authority) for some examples of potential revenue sources for school districts.[112]

DTSC also argues that the state already routinely funds half of the HMA costs and funds up to 100 percent of the costs in cases of economic hardship under Education Code sections 17072.12, 17072.13 and 17072.18.[113]

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[105] *Id*, p. 3.

[106] *Ibid*.

[107] *Ibid*.

[108] *Id*, citing *Kern*, *supra*, 30 Cal. 4th 727, 754.

[109] DTSC, comments on 2-TC-43, *supra*, p. 4.

[110] DTSC, comments on 02-TC-43, *supra*, p. 1.

[111] *Id*, p. 4, citing *Connell v. Superior Court*, *supra*, 59 Cal.App.4th 382.

[112] *Id*, p. 5.

[113] DTSC, comments on 02-TC-43, *supra*, p. 5.

3. Jointly Funded Programs are Outside the Coverage of Section 6, Article XIII B of the California Constitution.

DTSC states, "jointly funded programs such as school funding are outside the coverage of Section 6, article XIII B of the California Constitution. . . under *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App.4th 1264 (*County of Sonoma*)."[114]

4. HMAs are Part of the School District's Continuing Duty to Provide Safe School Sites, Not a New Program or Higher Level of Service.

Finally, DTSC argues that the preparation of HMAs is a condition of funding and "compliance with these funding conditions fails to provide a new program or higher level of service to the public to qualify as a reimbursable state mandate under *County of Sonoma*."[115] DTSC argues that prior to 1975, the state did not fund site acquisition and investigation costs, so the state has not shifted state program costs to the districts.[116] Specifically, DTSC states:

> Here, the program at issue concerns school facility safety, an area that the state has long regulated to assure safety of school children in facilities for compulsory education. (Former Educ. Code § 39002; *Hall v. City of Taft* (1956) 47 Cal. 2nd 177, 185-186.) A mandate is a new program if the local entity had not been previously required to implement it. (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 at p. 1189 (*Los Angeles* 2003).) However, to qualify for reimbursement, the program must be one that the state previously funded in whole and would newly be funded solely by local tax revenues and not by other levies. (*Los Angeles* 2003, *supra*, 110 Cal. App.4th at 1193, citing *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4th 1264 at p. 1289.)

DTSC states that HMAs do not provide a new service to the public. Instead, they require research and periodic evaluation at key decision points, such as the Phase I Assessment and PEA, to help inform public spending decisions to assure reasonable use of state school facility funds.[117] This increased level of information also protects against commitment to sites with unknown contamination levels. In addition, these processes assure that the site is reasonably safe for its intended use: occupancy by children for compulsory education. The situation here is similar to *County of Los Angeles v. Department of Industrial Relations* where the court found costs of complying with new elevator and earthquake safety standards were not reimbursable as state mandates because they provided no new or increased level of service to the public.[118]

C. Department of Education's Position

DOE states that the test claim statutes in 02-TC-30 (*School Facilities Funding Requirements*) do not impose a state-mandated program because each of the programs pled is but "one of various funding mechanisms available to school districts for the funding of facilities. School districts elect to

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[114] DTSC, comments on 02-TC-43, *supra*, p. 1.

[115] DTSC, comments on 02-TC-43, *supra*, p. 1.

[116] *Id*, p. 7.

[117] DTSC, comments on 02-TC-43, *supra*, p. 10.

[118] *Ibid.*

participate in [these programs] and any requirements regarding [these programs] are applicable only after districts elect to participate. . . ."[119]

D. Department of Finance's Position

1. School Facilities Funding Requirements

DOF states:

> Nothing in the statutes or regulations citied by the Claimant [] makes a school district's participation in the funding programs a compulsory activity. Instead, we conclude that a district's participation in any of the cited programs is voluntary and a result of the district's discretionary choice. We also note that 25 to 30 percent of California's nearly 1,100 K-12 school districts do not participate in the state-funded school facility programs, which demonstrates that the programs are not compulsory.[120]

DOF also cites to the relevant sections of each of the chapters under which the claimant is alleging reimbursable activities to demonstrate that there is no legal requirement for school districts to comply with the requirements pled unless they make the discretionary decision to:

- Order an election of whether to issue bonds under the Strict Accountability in Local School Construction Bonds Act of 2000;
- Form a school facilities improvement district and issue bonds under Education Code part 10, Chapter 2 (Bonds of School Facilities Improvement Districts);
- Enter into an agreement with the state to receive funds for the construction, reconstruction or replacement of school facilities from the SAB pursuant to the State School Building Lease-Purchase Law of 1976;
- Apply to receive an eligibility determination or funding for the construction, reconstruction or replacement of school facilities from the SAB pursuant to the Leroy F. Greene School Facilities Act of 1998;
- Adopt a resolution authorizing the district to file an application to lease portable classrooms from the SAB pursuant to the Emergency (State Relocatable) Classroom Law of 1979;
- Issue sale revenue bonds to finance construction of joint occupancy facilities necessary to relieve overcrowded schools pursuant to Education Code Part 10, Chapter 15 (School District Revenue Bonds);
- Approve the issuance of certificates of participation or revenue bonds or enter into any agreement for financing school construction (i.e. approve non-voter approved debt) which triggers public disclosure requirements pursuant to Education Code Part 10, Chapter 16; or
- Undertake, itself or through an agent, the financing or refinancing of a project or of working capital pursuant to Education Code Part 10, Chapter 18 (California School Finance Authority).[121]

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[119] DOE, comments on 02-TC-30, p. 1.

[120] DOF, comments on 02-TC-30, February 9, 2004, p. 1.

[121] *Id*, p.p. 1-4.

DOF notes that "when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a state-mandated reimbursable program. In [*Kern*], the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity."[122]

DOF also notes that in the first 200 pages of the test claim it found "more than three-dozen misstatements" of the Education Code.[123] Specifically, DOF asserts that claimant inserted the word "shall" in its citations to statute where the statute actually says "may" thus "changing an otherwise permissive action of the board to an action that appears compulsory."[124]

Finally, DOF asserts that school districts have fee authority (i.e. development fees) for the purpose of funding the construction or reconstruction of school facilities.[125]

2. Hazardous Materials Assessments

DOF states that the school district's participation in the Leroy F. Greene School Facilities Act of 1998, School Facilities Program (SFP) (Educ. Code § 17070.10 *et seq*.) "is strictly voluntary and the result of elective action taken by the governing board of the district."[126] DOF argues the SFP requirements apply to discretionary, school district proposed, projects and school facilities construction projects. DOF cites to *Kern* for the proposition that "where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity."[127]

Moreover, with regard to HMAs, "Education Code section 17213.1 (b) states, 'The costs incurred by school districts when complying with this section are allowable costs for an applicant under Chapter 12.5, Part 10 and may be reimbursed in accordance with section 17072.13.'"[128]

Finally, DOF argues that "school districts have the authority to charge development fees to finance construction projects."[129] Specifically, DOF asserts that Education Code sections 17620-17626 "authorize school districts to levy fees against any construction within its district boundaries for the purpose of funding school construction."[130] DOF concludes with a discussion of the prohibition against finding a reimbursable mandate in a statute or executive order "if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order."[131]

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[122] DOF, comments on 02-TC-30, *supra*, p. 2.

[123] DOF, comments on 02-TC-30, *supra*, p. 4.

[124] *Ibid.*

[125] DOF, comments on 02-TC-30, *supra*, p. 4.

[126] DOF, comments on 02-TC-43, February 3, 2004, p. 1.

[127] *Id*, citing *Kern*, supra, 30 Cal.4th 727.

[128] DOF, comments on 02-TC-43, *supra*, p.1.

[129] DOF, comments on 02-TC-43, *supra*, p. 2.

[130] *Id*.

[131] *Id*.

III. Findings

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. "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."[132] 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.[133] In addition, the required activity or task must constitute a "new program," or it must create a "higher level of service" over the previously required level of service.[134]

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.[135] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[136] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[137] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[138]

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.[139] 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."[140]

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

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

[134] *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 Dist. v. Honig* (1988) 44 Cal.3rd 830, 835 *(Lucia Mar).*

[135] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,*

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

[137] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[138] *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.

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

[140] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

This analysis addresses the following issues:

A. Does the Commission have jurisdiction over a statute that was the subject of a prior final decision of the Commission?

B. Are the remaining test claim statutes and alleged executive orders subject to Article XIII B, section 6 of the California Constitution?

   1. Are statutes that have been repealed prior to the beginning of the potential reimbursement period subject to reimbursement under Article XIII B, section 6 of the California Constitution?

   2. Are the Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1998[141] executive orders subject to Article XIII B, section 6?

   3. Does Health and Safety Code section 25358.1 impose a program subject to Article XIII B, section 6 of the California Constitution?

   4. Does Health and Safety Code section 25358.7.1 impose any state-mandated duties on school districts?

   5. Are the activities required by the remaining test claim statutes and regulations state-mandated duties or are they downstream requirements of a discretionary decision of the school district?

A. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03).

The Commission has adopted a prior test claim related to school facility finance requirements that made specific findings on one of the statutes pled in this test claim. This prior decision is a final, binding decision which is relevant to the issue of jurisdiction.

In *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03), the Commission found that Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, did not impose a reimbursable state mandate on school districts because "the procedures a school district must follow when it seeks state funding pursuant to the Leroy Greene School Facilities Act of 1998 (commencing with Educ. Code, § 17070.10) are not state-mandated because the school district is not required to request state funding under section 17213.1." [142]

Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for

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[141] Note that the "1988" version of this Handbook was actually included in the caption for claimant's test claim filing. However, because claimant attached the 1998 version of this Handbook to the test claim filing and staff could not locate a 1988 version of this Handbook, the Commission presumes that claimant intended to plead the 1998 version.

[142] *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03), p. 14. Note that section 17213.1 was amended by Statutes 2000, chapter 443 (AB 2644) and Statutes 2002, chapter 935 (AB 14), which were also pled in this test claim and are not the subject of a final Commission decision. Therefore, those statutes are addressed below.

purposes of that test claim. "'Test claim' means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state."[143] Government Code, Title 2, division 4, Part 7 "establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies. . . ."

When 98-TC-04 was filed in 1999 and amended by 01-TC-03 in 2003, section 1182.2 of the Commission's regulations was in place and provided that "any person may submit comments in writing on any agenda item." Moreover, pursuant to the Bagley-Keene Open Meeting Act of 1967 and the Commission's regulations, claimant had the opportunity to attend and provide written or oral comments at the Commission hearing on *Acquisition of Agricultural Land for a School Site*. Government Code section 17500 explicitly states that the test claim procedure is designed to avoid a multiplicity of proceedings to address the same issue. Once a decision of the Commission becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), it is not subject to collateral attack. Thus, claimant is bound by the findings in *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03). The Commission may not address issues that were conclusively addressed in that test claim.

Therefore, the Commission finds the Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002, because this statute was the subject of a final decision of the Commission, *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03).

B. The Remaining Test Claim Statutes And Alleged Executive Orders Are Not Subject To Reimbursement Under Article XIII B, Section 6 of The California Constitution.

The courts have held that article XIII B, section 6 was not intended to entitle local agencies and school districts to reimbursement for all costs resulting from legislative enactments, but only those costs "mandated" by a new program or higher level of service imposed upon them by the state.[144] Thus, the issue is whether the test claim statutes impose a state-mandated activity on school districts.

For the test claim statutes or regulations to impose a state-mandated program, the language must order or command a school 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.[145] 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.[146]

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[143] *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802.

[144] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 1816.

[145] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 727 hereinafter "*Kern"*.

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

1. **Education Code sections 39003 and 39120 have been repealed since January 1, 1998, prior to the beginning of the potential reimbursement period for this test claim and thus cannot be reimbursable.**

Education Code sections 39003 and 39120 were repealed by Statutes1996, chapter 277 (S.B.1562), section 6, operative January 1, 1998. Because they have not been operative at any time during the reimbursement period which begins on July 1, 2002, they cannot be reimbursable.[147]

2. **The Audit Guides and Handbooks Claimed are not Executive Orders Subject to Article XIII B, Section 6.**

The Commission finds that the Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1998 are not executive orders. An executive order is "any order, plan, requirement, rule or regulation" issued by the Governor or any official serving at the pleasure of the Governor.[148] Although the above-mentioned audit guide, guidebook and handbooks are issued by state agency directors who serve at the pleasure of the Governor, they do not impose an "order, plan, requirement, rule or regulation." Specifically:

- The Substantial Progress and Expenditure Audit Guide of May 2003 cites to specific legislative or regulatory authority for each requirement in the guide and thus does not impose an order, plan, requirement, rule or regulation.[149]
- The School Facility Program Guidebook of January 2003 was developed by the Office of Public School Construction (OPSC) to "assist school districts in apply for and obtaining 'grant' funds for the new construction and modernization of school facilities under the Leroy F. Greene School Faculties Act of 1998."[150] According to OPSC, "it is intended to provide an overview of the program for use by school district, parents, architects, the Legislature and other interested parties on how a school district becomes eligible for funding and applies for state funding."[151]
- The State Relocatable Classroom Program Handbook of January 2003 provides an overview of the program and then takes the reader step-by-step through the application process provided by statutes and regulations adopted pursuant to the Administrative Procedures Act.[152]
- The Lease-Purchase Applicant Handbook of April 1998 provides an overview of the program and then takes the reader step-by-step through the application process provided by statutes and regulations adopted pursuant to the Administrative Procedures Act.[153]

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[147] Government Code section 17557.

[148] Government Code section 17516.

[149] See generally, Office of Public School Construction, The Substantial Progress and Expenditure Audit Guide, 2003.

[150] Office of Public School Construction, School Facility Program Guidebook, 2003, p. 1.

[151] *Ibid*.

[152] See generally, Office of Public School Construction, The State Relocatable Classroom Program Handbook, 2003.

[153] See generally, The Lease-Purchase Applicant Handbook, April 1998.

Because they do not require districts to do anything beyond what is required by statutes and regulations and are not plans, they are not executive orders. They merely explain the programs that are established in statute and regulation, summarizing requirements that have been established pursuant to statutory and regulatory provisions, including the test claim statutes and test claim regulations. They do not add any additional requirements above what is required by the relevant statutes and regulations, but rather, provide a tool to make compliance easier. Local agencies and school districts may refer solely to the test claim statutes and regulations and related statutes and regulations and consult with their attorneys to determine how to navigate the complex school facility funding process to maximize the amount of state-grant money they receive, if that is their preference.

3. Health and Safety Code Section 25358.1 as Added By Statutes 1999, Chapter 23 Does Not Impose a State-Mandated Program On School Districts Subject to Article XIII B, Section 6 of the Constitution Because The Requirements It Imposes Are Not Unique to Government.

a. Health and Safety Code Section 25358.1 as Added by Statutes 1999, Chapter 23 May Require School Districts to Perform Specified Activities.

The Commission finds that Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 imposes a requirement on school districts if they "[h]ave, or may have, acquired information relevant to [specified hazardous substance release related questions] in the course of commercial, ownership, or contractual relationship with any potentially responsible party." Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 imposes several requirements on "any potentially responsible party, or any person who has or may have, acquired information relevant to any of the following matters [i.e. specified hazardous substance release related matters] in the course of commercial, ownership, or contractual relationship with any potentially responsible party."[154] Specifically, that potentially responsible party or person who has or may have such knowledge, at the request of DTSC, is required to:

- Furnish information about the release;
- Provide access to records and properties;
- Permit inspections and the collection of samples by DTSC;
- Allow the set up and monitoring of equipment by DTSC to assess or measure the actual or potential migration of hazardous substances;
- Permit DTSC to survey and determine topographic, geologic, and hydrogeologic features of the land;
- Permit DTSC to photograph any equipment, sample, activity, or environmental condition discovered through the inspections, samples, monitoring and surveys, described above. However, DTSC must protect trade secrets pursuant to Health and Safety section 25358.2.

Health and Safety Code section 25358.1 also provides a number of protections for the potentially responsible party or person and their property. Health and Safety Code section 25310 specifies that the definitions contained in CERCLA section 101 apply to the terms in the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.40). A "person" is defined in CERCLA section 101(21) as "an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States government, state, municipality,

[154] Health and Safety Code section 25358.1, subdivision (b).

commission, political subdivision of a state, or any interstate body. Since a school district is a political subdivision of the state, it is a person under this definition. A "potentially responsible party" is a person that may be liable for CERCLA response costs, and as defined by section 107(a) of CERCLA includes:

- Current owners and operators regardless of whether they contaminated the site;
- Past owners and operators who owned or operated the facility at the time that hazardous substances were disposed;
- Persons who arranged for either the treatment or disposal, or the transportation for treatment or disposal of hazardous substances at the facility; and
- Persons who accepted hazardous substances for transport to disposal or treatment facilities that they selected.

Since a school district may be a current or past owner of contaminated property and may arrange for the treatment, disposal or transportation for treatment or disposal of hazardous substances found on its property, it may become a potentially responsible party in some instances. The Commission finds that because a school district is a person and may be a potentially responsible party, Health and Safety Code section 25358.1 imposes requirements on school districts where the district acquired information relevant to specified hazardous substance release related matters in the course of commercial, ownership, or contractual relationship with any potentially responsible party. Therefore, the Commission finds that Health and Safety Code section 25358.1, as added by Statutes 1999, chapter 23, imposes state-mandated duties on school districts within the meaning of article XIII B, section 6 of the California Constitution.

b. The Activities Required By Health and Safety Code Section 25358.1 Do Not Carry Out the Governmental Function of Providing a Service to the Public.

For Health and Safety Code section 25358.1 to be subject to article XIII B, section 6 of the California Constitution, it must constitute a new "program" or "higher level of service." The California Supreme Court, in the case of *County of Los Angeles v. State of California*,[155] defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[156]

Health and Safety Code section 25358.1 does not require school districts to provide any service to the public. Rather, it imposes disclosure and access requirements on parties who may be liable for the cleanup of hazardous substances released on or from a facility/property because they are:

- Past owners and operators who owned or operated the facility at the time that hazardous substances were disposed;
- Persons who arranged for either the treatment and/or disposal, or the transportation for treatment or disposal of hazardous substances at the facility; or

[155] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[156] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537, emphasis added.

- Persons who accepted hazardous substances for transport to disposal or treatment facilities that they selected.

County of Los Angeles v. Department of Industrial Relations,[157] addressed elevator safety requirements applicable to all elevators in the state. There, the court found that the regulations were not a program because "[p]roviding elevators equipped with fire and earthquake safety features simply is not 'a governmental function of providing services to the public.'"[158]

c. Health and Safety Code Section 25358.1 is Not Unique to Government.

Health and Safety Code section 25358.1 by its own terms applies to all potentially responsible parties, both private and public. As the *County of Los Angeles v. Department of Industrial Relations*[159] court explained, "[w]ere section 6 construed to require state subvention for the incidental cost to local governments of general law, the result would be far-reaching indeed."[160] There, the court found that the regulations were not a program because the regulations did not impose a unique requirement on local government and "[p]roviding elevators equipped with fire and earthquake safety features simply is not 'a governmental function of providing services to the public.'"[161] Likewise here, the Commission finds that the requirement that potentially responsible parties disclose information and provide access to DTSC or the applicable regional water quality control board is not unique to government but applies generally to all residents and entities in the state who find themselves in the position of being a potentially responsible party for purposes of CERCLA/Superfund.

As the requirements of Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 applies to both public and private entities, it does not impose a "unique requirement" on local governments, and thus it does not meet the second definition of "program" established by *County of Los Angeles*.

Providing access to your facility and disclosure about the release of hazardous substances for which one may be liable is not "a governmental function of providing services to the public" and is not unique to government. Therefore, the Commission finds that Health and Safety Code section 25358.1 as added by Statutes 1999, chapter 23 does not impose a new program or higher level of service subject to reimbursement under Article XIII B, section 6 of the California Constitution.

4. Health and Safety Code Section 25358.7.1, as Added by Statutes 1999, Chapter 23, Does Not Impose Any Activities or State-Mandated Duties on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution.

Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 allows a community to form a community advisory group (CAG) to review and comment on a response action being conducted in that community. Health and Safety Code section 25358.7.1 requires DTSC or the regional board that is conducting the response action to communicate and confer as appropriate with the CAG and to advise local regulatory and other appropriate local agencies of planned response actions so that they may review and comment.

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[157] *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538.

[158] *Id*, p. 1545.

[159] *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538.

[160] *County of Los Angeles v. State of California, supra,* p. 56.

[161] *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, 1545.

Based on the plain language of this statute, Health and Safety Code section 25358.7.1 requires DTSC to perform activities but does not mandate school districts to perform any activities. Therefore the Commission finds that Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 does not impose state-mandated duties on school districts within the meaning of Article XIII B, section 6 of the California Constitution.

5. The Remaining Test Claim Statutes and Regulations Do Not Impose State-Mandated Duties on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution.

If a school district makes a decision to build or modernize a school, it must determine how to fund that construction. Generally, a school can seek grant funding from the state through the state school facility program (SFP), which is funded through state bonds and/or it may issue local bonds pursuant to one of several local bond acts. Usually, but not always, schools rely on a combination of state and local bond funding for facilities.

If a school district decides to issue local bonds, it must comply with the public disclosure and other accountability requirements contained within the act under which the district decides to issue bonds, some of which were required by the statewide bond initiatives specifying the voting requirements for the issuance of local bonds. If a school district decides to seek state bond funding through the SFP (i.e. grant funding), the district must comply with various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements as a condition of receipt of that funding which includes preparation of hazardous materials assessments (HMA) and performing many of the other activities pled in this consolidated test claim.

HMAs are conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment. A Phase I Assessment must be prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials. If such a potential is found then a Preliminary Endangerment Assessment (PEA) is required to evaluate the threat posed to public health or the environment. The California Education Code requires DTSC to review Phase I Assessments and PEAs, and to make a determination about the need for further action or remediation.[162] School districts may elect to proceed directly to a PEA without having first completed a Phase I Assessment which can reduce costs when there is a known hazardous material present.[163]

There are two other programs pled in this test claim that do not fit neatly into the state funding or local bond funding categories:

- The State Relocatable Classroom Law of 1979 under which claimant alleges costs for activities related to the lease of portable classrooms from the state; and
- The California School Finance Authority Act, under which a school district may borrow funds from the state which are generally repaid with future Proposition 98 funds.

[162] Education Code section 17213.2.

[163] Education Code section 17213.1.

The remaining statutes and regulations,[164] which generally require compliance with SFFRs[165] if a school district seeks state grant funding, local bond funding or elects to participate in one of the other programs pled pursuant to the test claim statutes and regulations, do not mandate school districts to perform any activities because:

a) School districts are not legally compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.

b) The evidence in the record does not support a finding that school districts are practically compelled to do any of the following activities which would trigger the requirement to

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[164] Education Code sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5, 17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes, 2002, Chapters 33, 199, 935, 1075, and 1168;

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130: and Statutes 2008, Chapter 148; and

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70.

[165] i.e. the activities required as a condition of receipt of SFP funding, issuance of local bonds or participation in the other state programs pled which are discussed at length in the background at pages 6-23.

comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds. Rather, the requirement to comply with the SFFRs is triggered by a district's voluntary decisions to request and accept state matching funds under the SFP, to issue local bonds or to participate in one of the other voluntary programs pled.

a) *School districts are not legally compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.*

The decision to acquire a new school site, build a new school, undertake a school modernization project, add portable classrooms and accept SFP funding, issue local bonds or participate in one of the other voluntary programs pled in this test claim therefore, can arise in a myriad of ways, from a district-level decision to an initiative enacted by the voters. Likewise, there are a number of funding sources that a school district might utilize to fund discretionary school construction projects and a number of alternatives to building a new school that a district might consider. When SFP funding is used to acquire a school site or for school construction, compliance with the applicable SFFRs including the preparation of HMAs and related activities is a condition of funding. Generally, the following requirements are imposed as a condition of SFP: various planning, environmental, building safety, labor, public participation/disclosure and bond funding accountability requirements. Likewise, when local bonds are issued, compliance with the requirements of the statutory scheme under which they are issued is required.[166] These requirements generally include disclosure, voting and fiscal accountability. Similarly the "other" programs referred to in this analysis, the State Relocatable Classroom Law and California School Finance Authority Act impose their own requirements. What all of these requirements have in common, however, is that they are all downstream requirements triggered by a school district's decision to participate in the overlying program in order to acquire, expand, or modernize school facilities.

As discussed in the background above, in California, school facilities historically have been funded exclusively by local tax and fee revenues. More recently, the funding scheme has evolved to include state grant funding and issuance of local bonds, both of which impose certain requirements on schools as a condition of funding. Nothing in article XIII B, section 6 requires the state to reimburse local government for its costs incurred to meet conditions of state grant funding or its costs incurred to meet the conditions of voluntary programs such as the issuance of local bonds, lease of portable classrooms, or loan or state funds for discretionary projects. Thus there has been no shift in program responsibility and costs from state to local government. Rather than shifting costs and responsibilities to local government, the state has in fact assumed a greater share of the costs of building schools over the past several decades.[167] The programs pled in this test claim, represent a portion of the myriad of programs

[166] Note that, as discussed in the background above, when a school district acquires land or builds exclusively with its own funds, which may include funds from the issuance of bonds under some of the test claim statutes, they are exempt from some of the SFFRs (in particular some of the HMA requirements) imposed on districts that build with state funds.

[167] See generally, *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, Cohen, *supra*, and Brunner, *supra*.

that the Legislature has enacted to provide school districts with a variety of funding options for school facilities projects that the districts chose to undertake.

None of the laws or regulations cited by claimant require districts to: acquire new school sites, undertake new school or modernization projects, add portable classrooms; or request SFP funding, issue local bonds, or participate in the other state programs pled for those purposes. In comments filed February 20, 2004, however, claimant argues that participation in the Leroy F. Green School Facilities Act is not voluntary.[168] In support of this contention, claimant cites to *Butt v. State of California*[169] for the propositions that the state has a responsibility to "provide for a system of common schools, by which a school shall be kept up and supported in each district" and that those schools are required to be "free."

The Commission disagrees with the claimant's argument that "obtaining [state] school facilities funding is not optional." With regard to new construction of school buildings, the Second District Court of Appeal has stated: "[w]here, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine."[170] It is true, as claimant states, that courts have consistently held public education to be a matter of statewide rather than a local or municipal concern, and that the Legislature's power over the public school system is plenary.[171] These conclusions are true for every Education Code statute that comes before the Commission on the question of reimbursement under article XIII B, section 6 of the California Constitution. It is also true that the state is the beneficial owner of all school properties and that local school districts hold title as trustee for the state.[172]

Nevertheless, article IX, section 14 of the California Constitution allows the Legislature to authorize the governing boards of all school districts to initiate and carry on any program or activity, or to act in any manner that is not in conflict with state law. In this respect, it has been and continues to be the legislative policy of the state to strengthen and encourage local responsibility for control of public education through local school districts.[173] The governing boards of K-12 school districts may hold and convey property for the use and benefit of the school district.[174] Governing boards of K-12 school districts have also been given broad authority by the Legislature to decide when to build and maintain a schoolhouse and, "when desirable, may establish additional schools in the district."[175] Thus, under state law, the decision to construct a school facility lies with the governing boards of school districts, and is not legally compelled by the state.

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[168] Claimant, response to DOF comments on 02-TC-43, March 31, 2004, p. 2.

[169] *Butt v. State of California* (1992) 4 Cal.4th 688.

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

[171] See *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1579, fn. 5; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524 (formerly known as *California Teachers Assn. v. Huff*); *Hall v. City of Taft* (1956) 47 Cal.2d 177, 179.

[172] *Hayes v. Commission on State Mandates, supra*, 11 Cal.App.4th 1564, 1579, fn. 5.

[173] *California Teachers Assn., supra*, 5 Cal.App.4th 1513, 1523; Education Code section 14000.

[174] Education Code sections 35162.

[175] Education Code sections 17340, 17342.

Additionally, there are no statutes or regulations requiring the governing boards of school districts to construct new buildings or reconstruct unsafe buildings. The decision to reconstruct or even abandon an unsafe building is a decision left to the discretion of a school district. In *Santa Barbara School District v. Superior Court*, the California Supreme Court addressed a school district's decision to abandon two of its schools that were determined unsafe, instead of reconstructing a new building, as part of its desegregation plan.[176] The court held that absent proof that there were no school facilities to absorb the students, the school district, "in the reasonable exercise of its discretion, could lawfully take this action."[177] The court describes the facts and the district's decision as follows:

> On August 12, 1971, the Board received a report that the Jefferson school was structurally unsafe within the requirements of section 15503 [a former statute with language similar to Education Code sections 17367 and 81162]. The report recommended that a structural engineer be retained to determine whether the school should be repaired or abandoned, since if it cannot be repaired, it must be abandoned pursuant to section 15516. On May 15, 1972, three days before the final meeting of the Board, the superintendent received a report concerning the rehabilitation or replacement costs of the Jefferson school. The report found that it would cost $621,800 to make the existing structure safe and $655,000 to build an entirely new building. Accordingly, in fashioning the Administration Plan, the superintendent made provision therein for closing the Jefferson school. The Board would certainly be properly exercising its discretion in a reasonable manner were it to approve abandoning this building in view of the extreme cost. The determination of the questions whether a new school was needed to replace this structure or whether existing facilities could handle the Jefferson school students due to an expected drop in elementary enrollment, was properly within the Board's discretion.[178]

Thus, school districts are not legally compelled to acquire new school sites or construct new school facilities, modernize school facilities, add portable classrooms or request and accept SFP funds, issue local bonds, or participate in the other state programs pled for those purposes. Based on the above analysis, the Commission finds that the SFFRs are triggered by the district's voluntary decision to acquire a new school site, build a school, modernize a school, add portable classrooms, and to request and accept SFP funds, issue local bonds, or participate in the other state programs pled for such projects. Participation in any one of the voluntary programs pled (i.e. SFP funding, issuance of local bonds or other programs pled) is conditioned on performance the SFFRs required by that program and thus, school districts are not legally compelled to comply with the SFFRs required by the test claim statutes and regulations, but rather make a discretionary decision to participate and thus assume the duty to comply.

As discussed in the background above, all of the requirements alleged in this test claim are imposed "as a condition of receiving funding" or are required if the district chooses to issue local bonds. Thus, if a school district wishes to receive state grant funding or issue local bonds for funding of a school facilities project, compliance with the relevant SFFRs is a prerequisite. For example, consistent with the Public Resource Code 21102 and 21150 requirements, Education Code section 17025, subdivision (b) requires certification of CEQA compliance as a condition of bond funding for K-12 school districts.

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[176] *Santa Barbara School District v. Superior Court* (1975) 13 Cal.3d 315, 337-338.

[177] *Id*, p. 338.

[178] *Id*, p. 337.

The test claim statutes make clear that state agencies must require compliance with the SFFRs (i.e. the requirements of the test claim statutes and regulations) as a condition of providing state funding for a school facility project and must require compliance with the requirement for local bond funding imposed under the test claim statutes. However, there is no legal requirement that a school district seek funding from the state or issue local bonds.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.[179]

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[180] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."[181] The court also reviewed and affirmed the holding of *City of Merced*,[182] determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[183] The court stated the following:

> 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 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.[184] (Emphasis in original.)

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.*[185] (Emphasis added.)

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[179] *Kern* (2003) 30 Cal.4th 727.

[180] *Id.* at p. 737.

[181] *Ibid*.

[182] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[183] *Kern, supra*, 30 Cal.4th 727, 743.

[184] *Ibid*.

[185] *Id.* at p. 731.

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.[186] Similarly here, school districts are not legally compelled to request and accept state funds or issue local bonds for discretionary construction projects. However, if districts choose to receive SFP funds, issue local bonds or participate in the other voluntary programs pled then, based upon the plain language of the test claim statutes, certain activities are required as a condition of participation in those programs.

The financing of school facilities has traditionally been the responsibility of local government, with *assistance* provided by the state. In 1985, the California Supreme Court decided *Candid Enterprises, Inc. v. Grossmont Union High School District*, which provides a good historical summary of school facility funding up until that time as follows:[187]

> In California the financing of public school facilities has traditionally been the responsibility of local government. "Before the *Serrano v. Priest* decision in 1971, school districts supported their activities mainly by levying ad valorem taxes on real property within their districts." [Citation omitted.] Specifically, although school districts had received some state assistance since 1947, and especially since 1952 with the enactment of the State School Building Aid Law of 1952 (Educ. Code, § 16000 *et seq*.), they financed the construction and maintenance of school facilities through the issuance of local bonds repaid from real property taxes.
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> After the *Serrano* decision [citation omitted] and to the present day, local government remained primarily responsible for school facility financing, but has often been thrust into circumstances in which it has been able to discharge its responsibility, if at all, only with the greatest difficulty. In these years, the burden on different localities has been different: extremely heavy on those that have experienced growth in enrollment, light on those that have experienced decline, and somewhere in between on those that have remained stable.
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> In the early 1970's, because of resistance to increasing real property taxes, localities throughout the state began to experience greater difficulty in obtaining voter approval of bond issues to finance school facility construction and maintenance. As a result, a number of communities chose to impose on developers school-impact fees … in order to make new development cover the costs of school facilities attributable to it. [Citation omitted.]
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> With the passage of Proposition 13 in 1978 the burden of school financing became even heavier. "Proposition 13 prohibits ad valorem property taxes in excess of 1% except to finance previously authorized indebtedness. Since most localities have reached this 1% limit, school districts cannot raise property taxes even if two-thirds of a district's voters wanted to finance school construction." [Citation omitted.] Moreover, although Proposition 13 authorizes the imposition of "special taxes" by a vote of two-thirds of the electorate, such special taxes have rarely been imposed, remain novel, and as

[186] *Id*. at pp. 744-745.

[187] *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878.

> consequence are evidently not perceived as a practical method of school facility financing – especially in view of the need for a two-thirds vote of the electorate to approve them. [Citation omitted.]
>
> In the face of such difficulties besetting local governments, the state has not taken over any substantial part of the responsibility of financing school facilities, less still full responsibility. To be sure, in order to implement the *Serrano* decision the Legislature has significantly increased assistance to education. But it has channeled by far the greater part of such assistance into educational programs and the lesser part into school facilities; in fiscal year 1981-1982, for example, only 3.6 percent went for such facilities. [Citation omitted.][188]

State assistance for construction of school facilities comes almost exclusively from statewide general obligation bonds, and is implemented through the State Allocation Board.[189] Before Proposition 13, the state bond funds provided to school districts were provided through loan programs in which districts were required to repay their assistance with property tax revenues or local bond funds. After Proposition 13, the State Allocation Board shifted its policy of providing bond fund assistance from a loan-based program to a grant-based program.[190] Today, the grant funds are provided through the School Facility Program (SFP), under the provisions of the Leroy F. Greene School Facilities Act of 1998.[191] Under the SFP, state bond 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.[192] New construction grants provide funding on a 50/50 state and local match basis. Modernization grants provide funding on a 60/40 basis. Districts that are unable to provide local matching funds and are able to meet the financial hardship provisions may be eligible for state funding of up to 100 percent.[193]

Though there is substantial funding made available to school districts through state grants, not all school districts elect to receive assistance from state funds for construction of school buildings. The "School Facility Financing" handbook prepared in February 1999 states:

> If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. *There are school districts that repair and construct school buildings without the assistance from the State Allocation Board* (i.e., San Diego Unified School District, San Luis Unified School District).[194] (Emphasis added.)

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[188] *Id*, pp. 881-882. See also "School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds," *supra*.

[189] See "School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds," *supra*.

[190] "School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds," *supra*, pp. 12, 13, 20.

[191] Education Code section 17170.10 *et seq*.

[192] School Facility Program Handbook, *supra*, p. 23.

[193] *Id*. p. 61.

[194] School Facility Program Handbook, *supra*, endnote 2, p. 39.

Therefore, the Commission finds that school districts are not legally compelled to request or accept state funding or issue local bonds thus triggering the SFFRs requirements under these circumstances.

b) There is no evidence in the record to support a finding that school districts are practically compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.

In comments filed March 31, 2004, claimant notes that "a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate" and cites to *Sacramento II* as controlling case law.[195] Claimant relies on a study and Proposition 55 ballot language, both of which state a need to build more schools in California, to demonstrate that school districts are practically compelled to construct new school facilities when existing facilities become inadequate.[196] However, the question before the Commission is not whether additional school facilities are needed, but whether school districts are legally compelled by a state statute or regulation or practically compelled to build them and use SFP funding, issue local bonds or participate in the otherwise voluntary programs pled in this test claim therefore. As discussed above, the Commission finds that school districts are not legally compelled to acquire new school sites, construct new facilities, use state funds or issue local bonds under the test claim statutes.

The proper standard for determining whether school districts and community college districts are practically compelled to undertake school construction projects is the *Kern*[197] standard as followed, and expanded upon to provide specific evidentiary requirements, in the recent decision *Department of Finance v. Commission on State Mandates* (*POBRA*).[198] Absent legal compulsion, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern* 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.[199] Rather, local entities

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[195] Claimant's response to DOF comments on 02-tc-43, *supra*, p. 4, citing C*ity of Sacramento v. State of California* (1990) 50 Cal.3d. 51 (*Sacramento II*).

[196] Claimant's response to DOF comments on 02-tc-30, *supra*, pp. 3-4, citing Cohen, *supra*, and the 2004 Proposition 55 Ballot Pamphlet which identified a need to construct schools to house one million pupils and modernize schools for an additional 1.1 million students.

[197] *Kern, supra*, 30 Cal.4th 727.

[198] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, pp. 1365-1366, hereinafter "*POBRA*". Note that POBRA is the test claim statute that was formerly identified as "POBOR" by the Commission and Commission staff. However, as the POBRA Court pointed out at footnote 2, the statute's commonly used name is "Peace Officers Bill of Rights Act" and the acronym "POBRA" was used by the Supreme Court in *Mays v. City of Los Angeles* (2008) 43 Cal. 4th 313, 317. Therefore, this analysis will use the acronym POBRA.

[199] *Kern, supra*, 30 Cal.4th 727, 754.

that have discretion will make the choices that are ultimately the most beneficial for the entity and its community:

> 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.)[200]

Likewise, the state School Facilities Program (SFP) provides new construction grant funding on a 50/50 state and local match basis. Districts that are unable to provide local matching funds and are able to meet the financial hardship provisions may be eligible for state funding of up to 100 percent.[201] If a district decides not to acquire a new school site or build a new school with SFP funding, and hence not to comply with all the corresponding requirements including preparation of HMAs, there is no evidence of "draconian" consequences. Rather, the district will simply forgo the state matching funds for new construction and will need to figure out another way to house its students.

In *POBRA*, the court addressed the issue of the evidence needed to support a finding of practical compulsion. In that case, it was argued that districts "employ peace officers when necessary to carry out the essential obligations and functions established by law."[202] The Commission found that the POBRA statutes constituted a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.[203] In 2006, the Commission reconsidered the claim, as required by Government Code section 3313, and found that *San Diego Unified* supported the Commission's 1999 Statement of Decision. Specifically, with regard to schools, the Commission found that districts were practically compelled to employ peace officers based upon the district's "obligation to protect pupils from other children, and also to protect teachers themselves from the violence by the few students whose conduct in recent years has prompted national concern."[204]

The Commission's Statement of Decision on reconsideration pointed out that, like the decision on mandatory expulsions in the *San Diego Unified* case, its decision was supported by the fact that the California Supreme Court found that the state "fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline."[205] The Commission relied on a general requirement in the law (i.e. to provide safe schools) to support a finding of practical compulsion to perform specific activities (i.e. to hire police officers and comply

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[200] *Id*, p. 753.

[201] School Facility Program Handbook, *supra*, p. 61.

[202] *POBRA*, *supra*, 170 Cal.App.4th 1355**,** 1368.

[203] See CSM-4499.

[204] CSM 05-RL-4499-01, p. 26, citing *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

[205] *Id*.

with the down-stream requirements of hiring those officers). This is precisely the line of reasoning that claimant urges the Commission to follow in this test claim.

However, the court in *POBRA* found that the superior court erred in concluding as a matter of law that, "'[a]s a practical matter,' the employment of peace officers by the local agencies is 'not an optional program' and 'they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement." Moreover, the *POBRA* court did not find any evidence in the record to support a finding of legal or practical compulsion and the court provided some guidance regarding the kind of evidentiary showing required to make such a finding. Specifically, the court stated:

> The 'necessity' that is required is facing 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences.' That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences. [206]

Thus, practical compulsion must be demonstrated by specific facts in the record showing that unless the alleged activity is performed, here the activity of acquiring new school sites, building new school facilities or modernizing existing schools and accepting SFP funding, issuing local bonds or opting to participate in other state programs to further such projects, which would in turn trigger the requirement to comply with the SFFRs that are a condition of those funding programs, the district faces "certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences.'" Only a showing that relying on alternative arrangements to house students would result in such severe consequences will meet the practical compulsion standard. Some alternatives that school districts can employ without requesting SFP funds, issuing local bonds or participating in the other voluntary programs pled in this test claim, thus triggering the requirement to comply with SFFRs, include but are not limited to:

- Transferring students to other schools;[207]
- Double session kindergarten classes;
- District boundary changes;
- Multi-track year round scheduling;
- Bussing; and,
- Reopening closed school sites in the district, where available.

Thus, the Commission finds that there has been no concrete showing, as required by the *POBRA* court, that reliance upon non-construction alternatives to house students would result in severe adverse consequences.

Thus, there is no evidence in the law or in the record that school districts that elect not to use SFP funds, issue local bonds, or participate in the other voluntary programs pled in this test claim, which would trigger the requirement to comply with the SFFRs, face certain and severe penalties such as double taxation or other draconian consequences.

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[206] *POBRA*, *supra*, 170 Cal.App.4th 1355, 1368, citing *Kern*, *supra*, 30 Cal.4th at p. 754, quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74.

[207] See California Code of Regulations, title 14, section 15301.

Instead, the seeking of SFP funding, issuance of local bonds or participation in other voluntary programs pled in this test claim are discretionary decisions of the district, 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.[208] 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.[209]

The Supreme Court in *Kern* 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 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.[210] [211]

The holding in *City of Merced* applies in this instance. Any costs incurred under the SFFRs in the test claim statutes and regulations (excepting Health & Saf. Code § 25358.1) result from the school district's decision acquire new school sites, build new schools, undertake modernization projects, add portable classrooms or to request and accept SFP funding, issue local bonds or opt to participate in

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

[209] *Id*. at 783.

[210] *Kern, supra,* 30 Cal.4th 727, 743.

[211] 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. (Code Civ. Proc., § 1230.030.)

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. … (California Law Revision Commission comment on Code of Civil Procedure section 1230.030, 2009 Thomson Reuters.)

other state programs therefore. Under such circumstances, reimbursement is not required.[212] Therefore, based on the above discussion, the Commission finds that school districts are not mandated by the state to undertake discretionary projects and participate in the voluntary funding programs pled in this test claim, which would subject them to SFFRs.

CONCLUSION

The Commission concludes that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. Education Code sections 39003 and 39120 were repealed in 1993, prior to the beginning of the potential reimbursement period for this test claim and thus cannot be reimbursable.
2. The Commission does not have jurisdiction over Education Code section 17213.1, as added by Statutes of 1999, chapter 1002 (SB 62), because this statute was the subject of a final decision of the Commission, *Acquisition of Agricultural Land for a School Site* (98-TC-04 and 01-TC-03).
3. Health and Safety Code section 25358.1, as added by Statutes 1999, chapter 23 (SB 47) does not impose a "program" and thus is not subject to reimbursement under article XIII B, section 6 of the California Constitution.
4. The Substantial Progress and Expenditure Audit Guide of May 2003, the School Facility Program Guidebook of January 2003, the State Relocatable Classroom Program Handbook of January 2003, and the Lease-Purchase Applicant Handbook of April 1988 are not executive orders subject to Article XIII B, section 6.
5. Health and Safety Code section 25358.7.1, as added by Statutes 1999, chapter 23 (SB 47), imposes requirements on DTSC, not school districts.
6. The statutes below, which generally require compliance school facility funding requirements, do not mandate school districts to perform any activities because:
    a) School districts are not legally compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.
    b) There is no evidence in the record to support a finding that school districts are practically compelled to: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, request and accept SFP funding, issue local bonds, or opt to participate in other state programs to further such projects, which would trigger the requirement to comply with SFFRs contained in the test claim statutes and regulations.

Education Code Sections 15271, 15272, 15274, 15276, 15278, 15280, 15282, 15284, 15301, 15302, 15303, 15320, 15321, 15322, 15323, 15324, 15325, 15326, 15327, 15336, 15340, 15341, 15342, 15343, 15346, 15347, 15349, 15349.1, 15350, 15351, 15352, 15354, 15355, 15359.2, 15359.3, 15380, 15381, 15384, 15390, 15391, 17006, 17008.3, 17009, 17009.5, 17014, 17015, 17016, 17017, 17017.2, 17017.5, 17017.6, 17017.7, 17017.9, 17018, 17018.5, 17018.7, 17019.3, 17019.5, 17020, 17021.3, 17022, 17022.7, 17024, 17025, 17029, 17029.5, 17030, 17030.5, 17031, 17032, 17032.3, 17032.5,

[212] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880.

17036, 17038, 17040, 17040.1, 17040.2, 17040.3, 17040.6, 17040.7, 17040.8, 17041.1, 17041.2, 17041.8, 17042.7, 17042.9, 17047, 17047.5, 17049, 17056, 17059, 17059.1, 17061, 17062, 17063, 17064, 17065, 17066, 17070.33, 17070.50, 17070.51, 17070.60, 17070.63, 17070.70, 17070.71, 17070.75, 17070.77, 17070.80, 17070.90, 17070.95, 17070.97, 17070.98, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.46, 17071.75, 17072.10, 17072.12, 17072.13, 17072.20, 17072.33, 17072.35, 17073.10, 17074.10, 17074.15, 17074.16, 17074.20, 17074.25, 17074.26, 17074.30, 17074.50, 17074.52, 17074.54, 17074.56, 17075.10, 17075.15, 17076.10, 17076.11, 17077.10, 17077.30, 17077.35, 17077.40, 17077.42, 17077.45, 17078.18, 17078.20, 17078.22, 17078.24, 17078.25, 17088.3, 17088.5, 17088.7, 17089, 17089.2, 17090, 17092, 17096, 17110, 17111, 17150, 17180, 17183.5, 17193.5, 17194, 17199.1, 17199.4, 17210, 17210.1, 17211, 17212, 17212.5, 17213, 17213.1, 17213.2, 17251, 17315, and 100620 as added or amended by Statutes 1976, Chapter 557; Statutes 1977, Chapter 242; Statutes 1978, Chapter 362; Statutes 1982, Chapter 735; Statutes 1990, Chapter 1602; Statutes 1991, Chapter 1183, Statutes 1996, Chapter 277; Statutes 1997, Chapters 513, 893, and 940; Statutes 1998, Chapters 407, 485, 691, 741, 848, 941, 957, and 1076; Statutes 1999, Chapters 133, 709, 858, 992; Statutes 2000, Chapters 44, 193, 443, 530, 590, and 753; Statutes 2001, Chapters 132, 159, 194, 422, 647, 725, 734 and 972; and Statutes, 2002, Chapters 33, 199, 935, 1075, and 1168;

Public Resources Code sections 21151.4 and 21151.8 as amended by Statutes 2003, Chapter 668; Statutes 2004, Chapter 689; Statutes 2007, Chapter 130: and Statutes 2008, Chapter 148; and

California Code of Regulations, Title 2, Sections 1859.20, 1859.21, 1859.22, 1859.30, 1859.31, 1859.32, 1859.33, 1859.35, 1859.40, 1859.41, 1859.50, 1859.60, 1859.70, 1859.72, 1859.74.1, 1859.75, 1859.75.1, 1859.76, 1859.77.1, 1859.77.2, 1859.79, 1859.79.2, 1859.79.3, 1859.81, 1859.81.1, 1859.82, 1859.90, 1859.100, 1859.102, 1859.104, 1859.104.1, 1859.104.2, 1859.104.3, 1859.105, 1859.105.1, 1859.106, 1859.107, 1862.52, 1862.53, 1865.3, 1865.8, 1865.32.5, 1865.33, 1865.39, 1865.42, 1865.43, 1865.50, 1865.70.

Glossary of Frequently Used SFFRs Related Terms and Acronyms:

CEQA: California Environmental Quality Act	An Act with the purposes of informing decision makers and the public about project impacts, identifying ways to avoid or significantly reduce environmental damage, preventing environmental damage by requiring feasible alternatives or mitigation measures, disclosing to the public reasons why an agency approved a project if significant environmental effects are involved, involving public agencies in the process, and increasing public participation in the environmental review and the planning processes.
CERCLA: federal Comprehensive Environmental Response, Compensation, and Liability Act	HSAA is a 1980 law passed to address the cleanup of abandoned toxic waste sites. DTSC administers CERCLA, commonly known as "Superfund", which is implemented in California through HSAA and related regulations.
DOE: California Department of Education	
DOF: California Department of Finance	
DTSC: California Department of Toxic Substances Control	
EIR: Environmental Impact Report	A detailed statement prepared in accordance with CEQA whenever it is established that a project may have a potentially significant effect on the environment. The EIR describes a proposed project, analyzes potentially significant environmental effects of the proposed project, identifies a reasonable range of alternatives, and discusses possible ways to mitigate or avoid the significant environmental effects. EIR can refer to the draft EIR (DEIR) or the final EIR (FEIR) depending on context. (Pub. Resources Code §§ 21061, 21100 and 21151; Cal. Code Regs., tit. 14, § 15362.)
HMAs: Hazardous Materials Assessments	Environmental studies conducted to provide basic information for determining if there has been a release or there is a threatened release of a hazardous material or if there may be a naturally occurring hazardous material present at the site which may pose a risk to human health or the environment.
HSAA: The Hazardous Substance Account Act	California's equivalent to CERCLA. HSAA funds the cleanup of toxic sites from a fund created from taxes and fines levied on the site's polluters, and imposes requirements on affected property owners and potentially responsible parties and a number of related requirements on state agencies.
ND: Negative Declaration	A written statement by the lead agency that briefly states why a project subject to CEQA will not have a significant effect on the

	environment. An ND precludes the need for an EIR. (Pub. Resources Code § 21064; Cal. Code Regs., tit. 14, § 15371.)
OPSC : Office of Public School Construction	The administrative arm of the SAB whose primary responsibilities include: allocating state funds for projects approved by the SAB, reviewing eligibility and funding applications, and providing information and assistance to school districts.
Phase I Assessment	HMA prepared to identify the potential for hazardous material release or the presence of naturally occurring hazardous materials.
PEA: Preliminary Endangerment Assessment	HMA prepared if the Phase I Assessment identified potential or actual hazardous materials to evaluate the threat posed to public health or the environment.
SAB: State Allocation Board	The board responsible for approving all state apportionments for new school construction and modernization projects.
SFP: State School Facility Program	A state grant program, funded with statewide bonds, to fund new school facilities and the modernization of existing school facilities.
SFFRs: School Facilities Funding Requirements	Activities required as a condition of funding or participation in state school facility programs.