ITEM 3

TEST CLAIM

Education Code Sections 17620, 17621, 17622, 17623, 17624, 17625, and 17626
as Renumbered or Amended by Statutes 1996, Chapter, 277, Statutes 1998, Chapter 207,
Statutes 1999, Chapter 300 and Statutes 2000, Chapter 135

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981, 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032, 66034, and 66037
as added or amended by Statutes 1977, Chapter 955, Statutes 1979, chapter 282,
Statutes 1980, Chapter 1354, Statutes 1981, Chapter 201, Statutes 1982, Chapter 923,
Statutes 1983, Chapters 921 and 1254, Statutes 1984, Chapter 1062,
Statutes 1985, Chapter 1498, Statutes 1986, Chapters 136, 685, 887, and 888, Statutes 1987, Chapters 927, 1002, 1037, 1184 and 1346, Statutes 1988, Chapters 29, 160, 418, 912 and 926, Statutes 1989, Chapters 170, 1209 and 1217, Statutes 1990, Chapters 633 and 1572, Statutes 1992, Chapters, 169, 231, 487, 605 and 1354, Statutes 1993, Chapters 589 and 1195, Statutes 1994, Chapters 300, 686, 983 and 1228, Statutes 1995, Chapter 686, Statutes 1996, Chapters, 277, 549, 569, and 799, Statutes 1997, Chapter 772, Statutes 1998, Chapters 407 and 689, Statutes 1999, Chapter 858 and Statutes 2002, Chapters 33 and 1016

Developer Fees
(02-TC-42)

Clovis Unified School District, Claimant

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SixTen and Associates
Mandate Reimbursement Services

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San Diego, CA 92117

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Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 25, 2003

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Clovis Unified School District
Statutes of 2002/Chapter 1016
Developer Fees

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Clovis Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William McGuire,
Associate Superintendent, Business Services
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

for Keith B. Petersen

C: William McGuire, Associate Superintendent, Business Services
Clovis Unified School District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

RECEIVED
JUN 27 2003
COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-12

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates 5252 Balboa Avenue, Suite 807 San Diego, California 92117	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

1016/02 Developer Fees
See: Attachment

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
William McGuire, Associate Superintendent	Voice: 559-327-9110

Signature of Authorized Representative	Day:
X 	June 23, 2003

Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 1016, Statutes of 2002
Developer Fees

Chapter 1016, Statutes of 2002
Chapter 33, Statutes of 2002
Chapter 135, Statutes of 2000
Chapter 858, Statutes of 1999
Chapter 300, Statutes of 1999
Chapter 689, Statutes of 1998
Chapter 407, Statutes of 1998
Chapter 772, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 569, Statutes of 1996
Chapter 549, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 686, Statutes of 1995
Chapter 1228, Statutes of 1994
Chapter 983, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 589, Statutes of 1993
Chapter 1354, Statutes of 1992
Chapter 605, Statutes of 1992
Chapter 487, Statutes of 1992
Chapter 231, Statutes of 1992
Chapter 169, Statutes of 1992
Chapter 536, Statutes of 1991
Chapter 1572, Statutes of 1990
Chapter 633, Statutes of 1990

Chapter 1217, Statutes of 1989
Chapter 1209, Statutes of 1989
Chapter 170, Statutes of 1989
Chapter 926, Statutes of 1988
Chapter 912, Statutes of 1988
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Chapter 1002, Statutes of 1987
Chapter 927, Statutes of 1987
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Chapter 955, Statutes of 1977

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Attachment To:
COSM Form CSM 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 1016, Statutes of 2002
Developer Fees

Government Code Section 65970
Government Code Section 65971
Government Code Section 65972
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Government Code Section 66031
Government Code Section 66032
Government Code Section 66034
Government Code Section 66037

Claim Prepared By:
Keith B. Petersen
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San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	
	)	No. CSM _____
Clovis Unified School District	)	Developer Fees
	)	
Test Claimant	)	
	)	Chapter 1016, Statutes of 2002
	)	Chapter 33, Statutes of 2002
	)	Chapter 135, Statutes of 2000
	)	Chapter 858, Statutes of 1999
	)	Chapter 300, Statutes of 1999
	)	Chapter 689, Statutes of 1998
	)	Chapter 407, Statutes of 1998
	)	Chapter 772, Statutes of 1997
	)	Chapter 799, Statutes of 1996
	)	Chapter 569, Statutes of 1996
	)	Chapter 549, Statutes of 1996
	)	Chapter 277, Statutes of 1996
	)	Chapter 686, Statutes of 1995
	)	Chapter 1228, Statutes of 1994
	)	Chapter 983, Statutes of 1994
	)	Chapter 300, Statutes of 1994
	)	Chapter 1195, Statutes of 1993
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	)	Chapter 605, Statutes of 1992
	)	Chapter 487, Statutes of 1992
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) Chapter 1217, Statutes of 1989
) Chapter 1209, Statutes of 1989
) Chapter 170, Statutes of 1989
) Chapter 926, Statutes of 1988
) Chapter 912, Statutes of 1988
) Chapter 418, Statutes of 1988
) Chapter 160, Statutes of 1988
) Chapter 29, Statutes of 1988
) Chapter 1346, Statutes of 1987
) Chapter 1184, Statutes of 1987
) Chapter 1037, Statutes of 1987
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) Developer Fees
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)	66020, 66022, 66023, 66024, 66025,
)	66030, 66031, 66032, 66034, 66037
)	
)	

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code Section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Clovis Unified School District is a "school district" as defined in Government Code Section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for school districts to establish and implement policies and procedures to comply with the collection of developer fees.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975 there was no state statute or executive order in effect

[1] Government Code Section 17519, as added by Chapter 1459/84:
""School District" means any school district, community college district, or county superintendent of schools."

which required school districts to establish procedures to collect fees from developers to provide funding for the additional school facility resources needed in response to increased student population.

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65970[2] to set forth legislative findings and declarations.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65971[3] to require the governing board of a school district to notify the city council or

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[2] Government Code Section 65970, as added by Chapter 955, Statutes of 1977, Section 1:

"The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California."

[3] Government Code Section 65971, as added by Chapter 955, Statutes of 1977, Section 1:

"If the governing body of a school district which operates an elementary or high school makes a finding supported by clear and convincing evidence that: (a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exist, the governing body of the school district shall notify the city council or board of supervisors of the city or county within which the school district lies. The notice of findings sent to the city or county shall specify the mitigation measures considered by

board of supervisors when the governing body of a school district finds by clear and convincing evidence that (a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs and (b) that all reasonable methods of mitigating the conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exists. If the council or board concurs in those findings, the provisions of Section 65972 shall be applicable to residential development by the council or board.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65972[4] which prohibits the city council or board of supervisors from approving an ordinance re-zoning property to a residential use, granting a discretionary permit for residential use, or approval of a tentative subdivision map for residential purposes within the attendance area where it has been determined that conditions of overcrowding exist except upon a finding that an ordinance pursuant to Section 65974

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the school district. If the city council or board of supervisors concurs in such findings the provisions of Section 65972 shall be applicable to actions taken on residential development by such council or board."

[4] Government Code Section 65972, as added by Chapter 955, Statutes of 1977, Section 1:

"Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974."

has been adopted, or (2), that there are specific overriding fiscal, economic, social, or environmental factors which justify the approval of a residential development.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65973[5] to provide relevant definitions.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65974[6], where overcrowded conditions exist, to allow a city, county, or city and county,

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[5] Government Code Section 65973, as added by Chapter 955, Statutes of 1977, Section 1:

"As used in this chapter:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units."

[6] Government Code Section 65974, as added by Chapter 955, Statutes of 1977, Section 1:

"For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined necessary pursuant to Section 65971 and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the

by ordinance, to require a dedication of land, payment of fees, or both, as a condition of residential development approval, and for the purpose of providing interim classroom facilities. Subdivision (c) demands the land or fees, or both, be used only for the purpose of providing interim elementary or high school classroom and related facilities. Required fees shall be paid at the time the building permit is issued. Land dedications are not required of subdivisions containing 50 parcels or less.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65976[7] to require school districts to submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall

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community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, the payment shall be made at the time the building permit is issued.

Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less."

[7] Government Code Section 65976, as added by Chapter 955, Statutes of 1977, Section 1:

"Following the decision by the city or county to require the dedication of land or the payment of fees, or both, the governing body of the school district shall submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications."

include how the school sites are to be used, the classroom facilities to be made available, and the time when those facilities will be available. In the event the governing body of the school district cannot meet the schedule, it is required to submit modifications, along with the reason for the modifications, to the city council or board of supervisors.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65977[8] which, where two separate school districts share an attendance area where overcrowded conditions exist for both, both districts are required to enter into an agreement with the governing body of the city or county for the purpose of determining the distribution of revenues from the fees.

Chapter 955, Statutes of 1977, Section 1, added Government Code Section 65978[9] which requires school districts to maintain funds in a separate account. School

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[8] Government Code Section 65977, as added by Chapter 955, Statutes of 1977, Section 1:

"Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter."

[9] Government Code Section 65978, as added by Chapter 955, Statutes of 1977, Section 1:

"Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by August 1 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying

districts are required to file a report by August 1 of each year, or more frequently upon request, with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. The report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. If overcrowding no longer exists, the city or county shall cease levying fees or requiring dedication of land.

Chapter 282, Statutes of 1979, Section 53, amended Government Code Section 65974[10], subdivision (d), to limit fees to the amount of five annual lease payments for interim facilities. It also offers the builder an option, at his or her expense, to provide interim facilities, at a place designated by the school district. At the end of the fifth school year, the builder will, at the builder's expense, remove the facilities.

Chapter 282, Statutes of 1979, Section 54, added Government Code Section

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any fee or requiring the dedication of any land pursuant to this chapter."

[10] Government Code Section 65974, as amended by Chapter 282, Statutes of 1979, Section 53:

"(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development; provided, the fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the fees, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by such builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from such place."

65979[11] which prohibits any fee or dedication to the district after such school district has received an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

Chapter 282, Statutes of 1979, Section 55, added Government Code Section 65980[12] to prohibit building interim facilities with permanent foundations.

Chapter 282, Statutes of 1979, Section 56, added Government Code Section 65981[13] which requires a school district to recommend the fees for providing interim facilities within 60 days following the issuance of the initial building permit or the

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[11] Government Code Section 65979, as added by Chapter 282, Statutes of 1979, Section 54:
"After a school district has received an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code), the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential developments, to levy any fee or to require the dedication of any land within the attendance area of the district."

[12] Government Code Section 65980, as added by Chapter 282, Statutes of 1979, Section 55:
"Interim facilities for purposes of Section 65974 shall be limited to temporary classrooms, including their utilities, furnishings, and toilet facilities not constructed with permanent foundations."

[13] Government Code Section 65981, as added by Chapter 282, Statutes of 1979, Section 56:
"If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter."

district's authority to request fees shall be waived.

Chapter 1354, Statutes of 1980, Section 62.5, amended Government Code Section 65979[14] to change the restriction to receive fees after an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 to one year after the apportionment and only when such apportionment was for the construction of a school. The amendment also provides that, any time after receipt of the apportionment, when there is the further finding that (1), during the period of construction, additional overcrowding will occur from continued residential development, and (2) that the fee can be used to avoid the additional overcrowding before the school is made available to the school district, additional fees and dedications may be required. Any amounts of fees collected or land dedicated, after the receipt of the

[14] Government Code Section 65979, as amended by Chapter 1354, Statutes of 1980, Section 62.5:

"~~After a school district has received~~ One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential developments, to levy any fee or to require the dedication of any land within the attendance area of the district. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if there is the further finding that (1) during the period of construction additional overcrowding would occur from continued residential development, and (2) that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district. Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication."

construction apportionment and not used to avoid overcrowding, shall be returned to the person who paid the fee or made the land dedication.

Chapter 1354, Statutes of 1980, Section 62.6, amended Government Code Section 65980[15] to limit the definition of interim facilities to only "classroom facilities", "classroom and related facilities", and "elementary or high school facilities." Subdivision (a) defines "temporary classrooms." Subdivision (b) defines "temporary classrooms toilet facilities." Subdivision (c) was added to allow for reasonable site preparation and the installation of temporary classrooms.

Chapter 201, Statutes of 1981, Section 1, amended Government Code Section 65978[16] to change the report filing date from August 1 to October 15.

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[15] Government Code Section 65980, as amended by Chapter 1354, Statutes of 1980, Section 62.6:

"For the purposes of Section 65974, "classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" as defined in this Section and shall include no other facilities.

Interim facilities for purposes of Section 65974 shall be limited to the following:

(a) Temporary classrooms~~, including their utilities, furnishings, and~~ not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(b) Temporary classroom toilet facilities not constructed with permanent foundations.

(c) Reasonable site preparation and installation of temporary classrooms."

[16] Government Code Section 65978, as amended by Chapter 201, Statutes of 1981, Section 1:

"Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no

Chapter 923, Statutes of 1982, Section 3, amended Government Code Section 65974 to make technical changes.

Chapter 921, Statutes of 1983, Section 1, added Government Code Section 53077[17] to require that developer fees are to be deposited in a separate capital facilities account and to require that interest earned be expended for the same purpose as the original fee. "Local agency" was defined to include school districts.

Chapter 1254, Statutes of 1983, Section 5, added Government Code Section 65975[18]. Subdivision (a) allows a school district to use any or all fees collected for

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longer exist. Such report shall be filed by ~~August 1~~ October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter."

[17] Government Code Section 53077, as added by Chapter 921, Statutes of 1983, Section 1:

"If a local agency requires the payment of a fee in order to provide for an improvement to be constructed to serve a residential development as a condition to approving that development, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned on the fund shall also be deposited in that fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

For purposes of this Section, "local agency" means a county, city, city and county, school district, special district, or any other municipal public corporation or district."

[18] Government Code Section 65975, as added by Chapter 1254, Statutes of 1983, Section 5:

"(a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.) of a school project to be constructed in an attendance area where fees have

interim facilities toward the 10 percent funding contribution from school districts, as required for joint venture projects, toward school construction approved under the State School Lease-Purchase Law of 1976. This does not increase the amount of fees that might be collected under Section 65974. Subdivision (b) allows the use of fair market value of any land toward the 10 percent requirement when land has been dedicated.

Chapter 1062, Statutes of 1984, Section 1, amended Government Code Section 65978[19] to allow a 30-day extension for filing the account report in the case of

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been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this Section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code."

[19] Government Code Section 65978, as amended by Chapter 1062, Statutes of 1984, Section 1:

"Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; ~~and~~ the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board

extenuating circumstances.

Chapter 1498, Statutes of 1985, Section 1.5, amended Government Code Section 65971[20], subdivision (b), to require the city council or board of supervisors to

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of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this Section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter."

[20] Government Code Section 65971, as amended by Chapter 1498, Statutes of 1985, Section 1.5:

"~~If the~~(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes ~~a finding~~ both of the following findings supported by clear and convincing evidence ~~that: (a)~~

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for ~~such~~ the existence of those conditions ~~existing; and~~

(~~b~~2) ~~that~~ That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing ~~such~~ those conditions exist~~, the governing body of the school district shall notify the city council or board of supervisors of the city or county within which the school district lies.~~

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors. The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city

either concur or not concur within 61 to 150 days after receipt of the findings. They may have one 30-day extension of time.

Chapter 1498, Statutes of 1985, Section 2.5, amended Government Code Section 65973[21] to allow reasonable methods of mitigation to include agreements between affected schools and other school districts with surplus facilities which may be leased or purchased.

Chapter 1498, Statutes of 1985, Section 3, amended Government Code Section 65974[22], subdivision (4), to provide that any fees used to purchase land will not be used

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council or board of supervisors."

[21] Government Code Section 65973, as amended by Chapter 1498, Statutes of 1985, Section 2.5:

"As used in this chapter the following terms means:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of ~~such~~ the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units."

[22] Government Code Section 65974, as amended by Chapter 1498, Statutes of 1985, Section 3:

"(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall bear a reasonable relationship and shall be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. ~~(c)~~However, the value of the land to be dedicated or the

to purchase more land than is necessary for the placement of interim facilities.

Chapter 1498, Statutes of 1985, Section 4.5, amended Government Code Section 65976[23] to provide that the notice required in Section 69571 may include an increase in the amount of fee or dedication.

Chapter 1498, Statutes of 1985, Section 5, amended Government Code Section 65979 to make technical changes.

Chapter 1498, Statutes of 1985, Section 6, amended Government Code Section 65980[24] to add the definition of "approval of a residential development" in new

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amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place."

[23] Government Code Section 65976, as amended by Chapter 1498, Statutes of 1985, Section 4.5:

"~~Following the decision by the city or county~~ As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how ~~it~~ the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. ~~In the event~~ If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications."

[24] Government Code Section 65980, as amended by Chapter 1498, Statutes of 1985, Section 6:

"For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the

subdivision (a). Former subdivisions (a) and (b) were re-lettered (b) and (c) respectively. New subdivision (c) was amended to add subparagraph (4) to add land necessary for the placement of temporary classrooms and toilet facilities to the definition of interim facilities.

Chapter 136, Statutes of 1986, Section 1, amended Government Code Section 65979[25] to permit the levying of developer fees after the construction of facilities has

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development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" as defined in this Section and shall include no other facilities.

(c) Interim facilities ~~for purposes of Section 65974 shall be~~ are limited to the following:

(~~a~~ 1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(~~b~~ 2) Temporary classroom toilet facilities not constructed with permanent foundations.

(c 3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2)."

[25] Government Code Section 65979, as amended by Chapter 136, Statutes of 1986, Section 1:

"One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

been completed, if additional overcrowding occurs.

Chapter 685, Statutes of 1986, Section 1, added Government Code Section 53077.5[26]. Subdivisions (a) provides that fees or charges imposed on a residential

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(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication."

[26] Government Code Section 53077.5, as amended by Chapter 136, Statutes of 1986, Section 1:

"(a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs last, provided, that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs last; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs last; or on a lump-sum basis when the last dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected, to make expenditures and incur obligations for specific purposes.

(c) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) This section applies only to fees collected by a local agency to fund the

development for the construction of public improvements, shall not require payment until the date of the final inspection or the date the certificate of occupancy is issued. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis or on a lump-sum. Subdivision (b) allows the local agency to require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected, to make expenditures and incur obligations for specific purposes. Subdivision (c) defines

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construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date."

"local agency" and "district." Subdivision (d) limits this section only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law. Subdivision (e) defines "final inspection" or "certificate of occupancy." Subdivision (f) requires the Legislative Analyst to submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst were to consult with individuals and associations who were knowledgeable about the impact of this section, including school districts. Subdivision (g) sets a sunset date for this section as January 1, 1993.

Chapter 887, Statutes of 1986, Section 9, added Government Code Section 53081[27] to provide that a school district may pay any bonds, notes, loans, leases or

[27] Government Code Section 53081, as added by Chapter 887, Statutes of 1986, Section 9:

"A school district that imposes any fees on construction within the school district may use those fees to pay any bonds, notes, loans, leases or other installment agreements including, but not limited to, bonds issued by the authority or loans, leases or other installment agreements that secure bonds issued by the authority. The authority may issue bonds, in accordance with Section 17883, to finance projects for one or more participating school districts that have imposed fees on construction within the district, which bonds may be payable from and secured by those fees in whole or in part. For this purpose, participating school districts may pledge and assign all or any part of those fees to the authority, and the fees so pledged and assigned to the authority, and any income thereon, may be pledged and assigned by the authority to the payment of bonds issued by the authority to finance projects for those participating school districts. While it is the intent of the Legislature that the amount of financing provided to a participating school district pursuant to this Section shall be reasonably related, in the judgment of the authority, to the amount of fees on construction expected by the authority to be derived from or attributable to that participating school district, nothing in this Section or any other provision of law shall be deemed to require a

other installment agreements using fees imposed on construction within the school district.

Chapter 887, Statutes of 1986, Section 10, amended Government Code Section 65974[28], to add subdivision (e), which provides that contracts between a builder and a school district, entered into pursuant to a School Facilities Master Plan for a

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proportionate or other relationship between the amount of the financing actually provided to a participating school district pursuant to this Section and the amount of fees on construction actually derived from or attributable to that participating school district pursuant to this Section or used by the authority to secure or pay any bonds of the authority issued pursuant to this Section.

[28] Government Code Section 65974, as amended by Chapter 887, Statutes of 1986, Section 10:

"(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a School Facilities Master Plan administered by a Join Powers Authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. Provided, however, that in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Local Assistance, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees

Any fees collected or land dedicated after September 1, 1986, pursuant to this Section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code."

designated community plan area, are not subject to square foot rate limitations. School districts are required to have on file with the Office of Local Assistance an application for preliminary determination of eligibility for project funding and should actively pursue in good faith other permanent financing mechanisms to reduce or eliminate developer fees.

Chapter 887, Statutes of 1986, Section 11, added Government Code Section 65995[29]. Subdivision (a) prohibits any fee, charge, dedication or other form of

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[29] Government Code Section 65995, as added by Chapter 887, Statutes of 1986, Section 11:

"(a) Except for a dedication or fee, or both, required under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other form of requirement shall be levied by the legislative body of a local agency against a development project, as defined by Section 65928, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fee, charge, dedication, or other form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under Chapter 4.7 (commencing with Section 65970), exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of covered or enclosed space, in the case of any residential development.

(2) Twenty-five cents ($0.25) per square foot of covered and enclosed space, in the case of any commercial or industrial development. No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities, and shall be reasonably related and limited to the need for schools caused by the development.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) Subdivision (a) does not apply during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county,

requirement be levied for the construction or reconstruction of school facilities, except for certain dedications or fees under Section 53080 or Chapter 4.7 (commencing with Section 65970). Subdivision (b) limits fees and charges under Chapter 4.7 to no more than one dollar and fifty cents ($1.50) per square foot for residential development and twenty-five cents ($0.25) per square foot for commercial or industrial development. These fees may be levied only when there is a finding, by the school district governing board, that the fees imposed are reasonably related and limited to the need for schools caused by the development. Subdivision (c) excludes development projects during the term of any contract between a builder and a school district before the effective date of the chapter. Any project commenced on or before September 1, 1986, is subject to only those fees in existence on that date. Subdivision (d) states a legislative finding and declaration that the Legislature occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of

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whether general law or chartered, on or before the effective date of this chapter that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development. In addition, any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other form of requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this Section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities."

all local measures on the subject. Subdivision (f) states that this Section is not intended to limit or prohibit the use of Government Code Section 53311, also known as the "Mello-Roos Community Facilities Act of 1982", to finance the construction or reconstruction of school facilities.

Chapter 887, Statutes of 1986, Section 11, added Government Code Section 65996[30] to list the code sections that exclusively mitigate the environmental effects related to the adequacy of school facilities when considering the approval of a development project.

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[30] Government Code Section 65996, as added by Chapter 887, Statutes of 1986, Section 11:

"The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 65928 of the Government Code pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(b) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(c) Chapter 4.5 (commencing with Section 15450) of Part 10 of the Education Code.

(d) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(e) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(f) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(g) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(h) Article 3 (commencing with Section 42260) of Chapter 7 of Part 24 of the Education Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities."

Chapter 888, Statutes of 1986, Section 6, added Government Code Section 53080[31]. Subdivision (a) provides that any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any new commercial and industrial construction and new residential construction within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities. Subdivision (b) requires the school district to provide certification that a development project has complied with the required levy of fees prior to the issuance of a building permit.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66000[32] to provide relevant definitions. Subdivision (c) defines "local agency" to include

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[31] Government Code Section 53080, as added by Chapter 888, Statutes of 1986, Section 6:

"(a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district, for the purpose of funding construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, and, as to residential development, to new construction, and other construction to the extent of the resulting increase in habitable area.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code."

[32] Government Code Section 66000, as added by Chapter 927, Statutes of 1987, Section 1:

"As used in this chapter:

a school district.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66001[33]. Subdivision (a) requires local agencies to identify the purpose of the fee and

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(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district; provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1,1988.

(d) "Public facilities" includes public improvements, public services and community amenities."

[33] Government Code Section 66001, as added by Chapter 927, Statutes of 1987, Section 1:

"(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine

the use to which the fee is to be put. They must also identify the facility, and determine the reasonable relationship between the need for a facility and the type of development project. Subdivision (b) requires local agencies to determine how there is a reasonable relationship between amount of fee and the cost of the facility. Subdivision (c) requires public agencies to deposit, invest, account for and expend fees pursuant to Section 53077. Subdivision (d) requires local agencies to make findings each fiscal year regarding any unexpended or uncommitted fees still on account five or more years after

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how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this Section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 53077.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it is charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) The local agency shall refund to the then current record owner or owners of lots or units of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this subdivision. A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this Section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this subdivision exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed."

its initial deposit. The findings must identify the purpose of the fee and its reasonable relationship to the purpose for which it is charged. Subdivision (e) requires local agencies to refund prorated fees and interest if its purpose or relationship cannot be shown.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66002[34]. Subdivision (a) provides that local agencies which levy a fee may adopt a

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[34] Government Code Section 66002, as added by Chapter 927, Statutes of 1987, Section 1:

"(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this Section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees. Subdivision (b) requires the capital improvement plan be adopted, and annually updated, by the governing body of the local agency at a noticed public hearing. Mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. Subdivision (c) defines "facility" or "improvement" to include schools and related facilities.

Chapter 927, Statutes of 1987, Section 1, added Government Code Section 66003[35], to provide that the chapter does not apply to a fee imposed pursuant to a reimbursement agreement with a property owner or developer.

Chapter 1002, Statutes of 1987, Section 1, amended Government Code Section 53077[36] to add subdivisions (c) and (d). Subdivision (b) was amended to add

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(7) Parks and recreation facilities.
(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002."

[35] Government Code Section 66003, as added by Chapter 927, Statutes of 1987, Section 1:
"This chapter does not apply to a fee imposed pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989."

[36] Government Code Section 53077, as amended by Chapter 1002, Statutes of 1987, Section 1:
"(a) If a local agency requires the payment of a fee ~~in order to provide for an improvement to be constructed to serve a residential development as a condition to approving that development~~ specified in paragraph (2) of subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account

definitions for the section. Subdivision (c) provides the opportunity to request an audit of any local agency fee or charge to any person. Subdivision (d) states the legislative intent that developer fees be held in a separate capital facilities account and allocated only for the purpose intended for the fee. Other technical changes were also made.

Chapter 1037, Statutes of 1987, Section 1, added Government Code Section 53080.15[37]. Subdivision (a) restricts the imposition of fees on a greenhouse or other

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or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned ~~on~~ by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

(b) For purposes of this section, ~~"local~~:

(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(2) "Fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) Section 66000, as added by Assembly Bill 1600 of the 1987-88 Regular Session, if enacted, and that is imposed by the local agency as a condition of approving the development project.

(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities."

[37] Government Code Section 53080.15, as added by Chapter 1037, Statutes of 1987, Section 1:

"(a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 53080 upon any greenhouse or other space that is

agricultural purpose structure unless the district makes a finding supported by substantial evidence that the amount of the fees are limited to the needs of the community for school facilities caused by the development and do not exceed the cost of providing those school facilities and prohibits the imposition of fees if there is not an increase in the number of employees or those employees will be housed by their employer, against which housing a fee has already been applied. The governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

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covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 53080, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 53080. In developing the funding described in this Section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service."

Chapter 1184, Statutes of 1987, Section 6, amended Government Code Section 53077.5 to make technical changes.

Chapter 1346, Statutes of 1987, Section 1, added Government Code Section 53080.4[38]. Subdivision (a) limits the cases where a fee may be levied against a

[38] Government Code Section 53080.4, as added by Chapter 1346, Statutes of 1987, Section 1:

"(a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 53080 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit,

manufactured home or mobilehome. Before levying any fee, charge, dedication, or other requirement as to any manufactured home or mobilehome, all of the following conditions must be true: the home is installed or occupied for the first time within the school district, it is the first time any home has been installed on that specific site, and

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commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 53080 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 53080 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code."

the home is installed on a foundation system built after September 1, 1986. Subdivision (b) requires fees to be paid at the close of escrow or on approval for occupancy. Subdivision (c) disallows any fee in the following cases: (1) any home was installed on the site on or before September 1, 1986; (2) construction on the site pursuant to a building permit commenced on or before September 1, 1986; (3) the home replaces another on that site; (4) the home replaces one destroyed by fire or natural disaster; (5) construction is an accessory structure, such as an awning, porch, or storage cabinet as defined in Health and Safety Code Section 18008.5 or 18213; and (6) a rental mobilehome park is converted to any form of resident ownership of the park. Subdivision (d) states that where a permanent residential structure constructed on the same lot replaces a manufactured home or mobilehome and a fee was levied for the previous home under Section 53080, the original fee will be applied to any additional amount required. Subdivision (e) holds that any fee collected on or after January 1, 1987, from a manufactured home, mobilehome, or mobilehome park that would not be authorized under subdivision (a), should be refunded unless it would impair contract obligations of the school district as agreed before the effective date of the section. Subdivision (f) defines the terms "manufactured home," "mobilehome," and "mobilehome park" as set in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

Chapter 29, Statutes of 1988, Section 2, amended Government Code Section

53080[39], subdivision (a), to require that the imposition of developer fees on residential construction that is not new be limited to projects having a value greater than $20,000.

Chapter 29, Statutes of 1988, Section 3, amended Government Code Section 65995[40], subdivision (b), to replace the paragraph (1) phrase "covered or enclosed space" to "habitable space" for residential development.

Chapter 29, Statutes of 1988, Section 4, added Government Code Section 65995.1[41]. Subdivision (a) provides that fees, charges, dedications and other forms of

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[39] Government Code Section 53080, as amended by Chapter 29, Statutes of 1988, Section 2:

"(a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district~~,~~ for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, ~~and, as~~ to new residential ~~development, to new~~ construction, and ~~other construction~~, to the extent of the resulting increase in habitable ~~area~~ space, as defined in Section 65995, to other residential construction as to any development project having a value in excess of twenty thousand dollars ($20,000)."

[40] Government Code Section 65995, as amended by Chapter 29, Statutes of 1988, Section 3:

"(1) One dollar and fifty cents ($1.50) per square foot of ~~covered or enclosed~~ habitable space, in the case of any residential development. "Habitable space," for this purpose, means the space determined by the building department of the city, or county issuing the building permit, in accordance with the building standards of that city or county, to be within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, detached accessory structure, or similar area."

[41] Government Code Section 65995.1, as added by Chapter 29, Statutes of 1988, Section 4:

"(a) Notwithstanding any other provision of law, as to any development project used exclusively for the housing of senior citizens, as described in Section 51.3 of the Civil Code, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial

requirements for development projects used exclusively for the housing of senior citizens may be applied only to new construction. Subdivision (b) provides that any senior citizen housing development project against which school facilities fees or other requirements have been levied may not be converted to another use without city or county approval. Approval cannot be granted without school district certification.

Chapter 160, Statutes of 1988, Section 70, amended Government Code Section 65996 to make technical changes.

Chapter 418, Statutes of 1988, Section 7, amended Government Code Section 66000[42] to delete the school district exception dependent upon Senate Bill No. 97.

Chapter 418, Statutes of 1988, Section 8, amended Government Code Section 66001 to make technical changes.

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or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than the housing of senior citizens only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a)."

[42] Government Code Section 66000, as amended by Chapter 418, Statutes of 1988, Section 7:

"(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district~~; provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988~~."

Chapter 418, Statutes of 1988, Section 9, amended Government Code Section 66003 to make technical changes.

Chapter 418, Statutes of 1988, Section 10, added Government Code Section 66004[43] to require new fees or an increase in fees be subject to Government Code Section 54994.1, regarding specific notice of fees.

Chapter 926, Statutes of 1988, Section 1, renumbered and amended Government Code Section 53077 as Government Code Section 66006[44]. The

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[43] Government Code Section 66004, as added by Chapter 418, Statutes of 1988, Section 10:

"The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5."

[44] Government Code Section 66006 (formerly Section 53077), as amended by Chapter 926, Statutes of 1988, Section 1:

"(a) If a local agency requires the payment of a fee specified in ~~paragraph (2) of~~ subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected~~, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985~~.

(b) For purposes of this section:

~~(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.~~

~~(2) "Fee"~~, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) Section 66000, ~~as added by Assembly Bill 1600 of the 1987-88 Regular Session, if enacted,~~ and that is imposed by the local agency as a condition of approving the development project.

amendment also provided other technical changes.

Chapter 912, Statutes of 1988, Section 2, renumbered and amended Government Code Section 53077.5 as Government Code Section 66007[45].

~~(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.~~

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities."

[45] Government Code Section 66007, as amended by 912, Statutes of 1988, Section 2:

"(a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, ~~provided, that~~ utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the ~~last~~ first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected, to make expenditures and incur obligations for specific purposes.

(c) ~~"Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency~~

1 The former subdivision (c) was deleted and replaced with a new subdivision (c).

~~of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.~~

(1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and from the date of recondition, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permit holder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificates of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

~~(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.~~

(~~g~~ f) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date."

Subparagraph (1) of new subdivision (c) provides for the developer to enter into a contract to pay any fee or charge not fully paid prior to the issuance of a building permit. Subparagraph (2) requires the contract to be recorded in the office of the county recorder and shall constitute a lien for the payment of the fee or charge. Subparagraph (3) provides for the notification of the opening of escrow instructions which shall pay the local agency for the fee or charge prior to disbursing proceeds to the seller. Former subdivisions (c) and (d) were re-lettered as subdivisions (d) and (e) respectively. Former subdivision (e) was deleted.

Chapter 170, Statutes of 1989, Section 2, amended Government Code Section 66003[46] to change the wording "city or county" to "local agency."

Chapter 170, Statutes of 1989, Section 3, amended Government Code Section 66006[47], to add a new subdivision (b) which requires local agencies to make a report

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[46] Government Code Section 66003, as amended by Chapter 170, Statutes of 1989, Section 2:

"Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a ~~city or county~~ local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989."

[47] Government Code Section 66006, as amended by Chapter 170, Statutes of 1989, Section 3:

"(b) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 60 days of the close of each fiscal year, make available to the public the beginning and ending balance for the fiscal year and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (e) of Section 66001 during the fiscal year. The local agency shall review this information at the next regularly scheduled public meeting not less than 15 days after the availability of the information required by this

available for each account within 60 days of the close of each fiscal year. The report will include the beginning and ending balance for the fiscal year, and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds. The local agency shall review this information at the next regularly scheduled public meeting not less than 15 days after the availability of the information.

Chapter 1209, Statutes of 1989, Section 19, amended Government Code Section 53080[48]. Subdivision (a), subparagraph (1) limits fees for the construction or

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subdivision."

[48] Government Code Section 53080, as amended by Chapter 1209, Statutes of 1989, Section 19:

"(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other ~~form of~~ requirement against any development project, ~~as defined in Section 65928, for new construction~~ within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995, exceeds 500 square feet. The calculation of the "resulting increase in assessable space", for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(2) For purposes of this Section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to

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operate.

(3) For purposes of this Section, construction or reconstruction of school facilities does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this Section is not prohibited.

(C) The purposes of deferred maintenance described in Section 39618 of the Education Code.

(4) The appropriate city or county may be authorized pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this Section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this Section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other ~~form of~~ requirement levied by the governing board of that school district pursuant to subdivision (a)

~~(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.~~

reconstruction of school facilities be applied only to (A) new commercial and industrial construction, (B) new residential construction, and (C) other residential construction if the assessable space exceeds 500 square feet. Subdivision (a) was amended to add subparagraph (4) which allows a school district to enter into a contractual agreement with the city or county to collect and otherwise administer the fees. Subdivision (a) was amended to add subparagraph (5) which allows a school district to expend fees for the purpose of performing studies or making required findings and determinations. No more than 3 percent of the fees may be retained to cover administrative costs. Costs over 3 percent shall be reimbursed from other revenue sources available to the school district. Former subdivision (c) was deleted and new subdivision (c) requires school district certification prior to conducting a final inspection or issuance of a certificate of occupancy.

Chapter 1209, Statutes of 1989, Section 20, added Government Code Section

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or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 53080.1, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007, the restriction set forth in subdivision (b) of this Section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 53080.1."

53080.1[49]. Subdivision (a) provides that fees enacted in accordance with

[49] Government Code Section 53080.1, as added by Chapter 1209, Statutes of 1989, Section 20:

"(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

Government Code Section 66000 et seq. are not effective sooner than 60 days following the final action. Fees are not subject to Public Resources Code Section 21000 which regulates activities found to affect the quality of the environment. Subdivision (b) requires school districts to adopt an interim authorization as an emergency measure to respond to current and immediate threats to the public health,

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(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are based on commercial and industrial factors within the district, as calculated on either an individual project or categorical basis, in accordance with subparagraph (A). The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper."

welfare, or safety. Subdivision (c) requires the school district to transmit a copy of the emergency resolution to each city and each county in the school district, along with all relevant supporting documentation, and a map clearly indicating the boundaries of the area subject to the fee. Subdivision (d) allows a party, on whom a fee, charge, dedication or other requirement has been imposed, to protest the establishment or imposition of that fee, charge, dedication or other requirement. Subdivision (e) describes additional duties of the school district governing board for commercial or industrial developments. In addition to those described above, the school district must make findings based on either individual projects or categories of commercial or industrial development, conduct a study to determine the impact of the increased number of employees upon the cost of providing school facilities within the district, and provide a process that permits the party against whom the fee is to be imposed the opportunity for a hearing to appeal that imposition.

Chapter 1209, Statutes of 1989, Section 21, added Government Code Section 53080.2[50] to require two school districts which share common territorial jurisdiction to

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[50] Government Code Section 53080.2, as added by Chapter 1209, Statutes of 1989, Section 21:

"(a) In the event the fee authorized pursuant to Section 53080 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(1) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(2) In the event the affected school districts are unable to reach an agreement pursuant to paragraph (1), the districts shall jointly submit the dispute

enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board. If they are unable to agree, the matter of allocation of fees will be determined by an arbitration panel. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

Chapter 1209, Statutes of 1989, Section 22, added Government Code Section 53080.3[51]. Subdivision (a) requires school districts to refund any fee collected if the

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to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(b) For purposes of the calculation of the district matching share under Section 17705.5 of the Education Code, the fee revenue allocated to the applicant district pursuant to subdivision (a) is deemed to be, as to that district, the maximum fee authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970) of Division 2 of Title 7, or both."

[51] Government Code Section 53080.3, as added by Chapter 1209, Statutes of 1989, Section 22:

"(a) Any school district that has imposed or, subsequent to the operative date of this Section, imposes, any fee, charge, dedication, or other requirement under Section 53080 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This Section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995.

(c) Where the amount of a local matching share required of any school district pursuant to Section 17705.5 of the Education Code includes the amount of a fee or other consideration imposed against a development project that is entitled to reimbursement under this Section, the local matching share shall be reduced by the amount of that fee or other consideration."

building permit expires on or after January 1, 1990 without the commencement of construction. Subdivision (c) requires the local matching share to be reduced by the amount of the fee when a local matching share includes the amount of a fee.

Chapter 1209, Statutes of 1989, Section 23, added Government Code Section 53080.6[52] which prohibits a fee to be applied to the reconstruction of any residential, commercial, or industrial structure after damage or destruction as a result of a natural disaster.

Chapter 1209, Statutes of 1989, Section 24, added Government Code Section 65974.5[53] to allow a school district, which receives funds that are collected under a

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[52] Government Code Section 53080.6, as added by Chapter 1209, Statutes of 1989, Section 23:

"(a) A fee, charge, dedication, or other requirement authorized under section 53080, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property."

[53] Government Code Section 65974.5, as added by Chapter 1209, Statutes of 1989, Section 24:

"Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the

local ordinance, resolution or other regulation in existence on September, 1, 1986, to expend funds for the construction or reconstruction authorized under Section 53080, after it has held a public hearing on the subject of the proposed expenditure.

Chapter 1209, Statutes of 1989, Section 25, amended Government Code Section 65995[54]. Subdivisions (b) was amended to change the charge on residential

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subject of the proposed expenditure."

[54] Government Code Section 65995, as amended by Chapter 1209, Statutes of 1989, Section 25:

"(a) Except for a ~~dedication or fee, or both, required~~ fee, charge, dedication or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other ~~form of~~ requirement shall be levied by the legislative body of a local agency against a development project, as defined ~~by~~ in Section ~~65928~~ 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other ~~form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under~~ requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of ~~habitable~~ assessable space, in the case of any residential development. "~~Habitable~~ Assessable space," for this purpose, means ~~the space determined by the building department of the city, or county issuing the building permit, in accordance with the building standards of that city or county, to be~~ all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

~~(2) Twenty-five cents ($0.25) per square foot of covered and enclosed space, in~~

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use

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of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. ~~No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities, and shall be reasonably related and limited to the need for schools caused by the development.~~ The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be ~~annually~~ increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) (1) ~~Subdivision (a) does not apply~~ Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before ~~the effective date of this chapter~~ January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development. which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase. ~~In addition, any~~

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other ~~form of~~ requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

development to be on "assessable" space as determined by the building department of the city or county. The change for commercial or industrial development was amended to apply to "chargeable" covered and enclosed space. New subdivision (d) excludes facilities used exclusively for religious purposes, a private full-time day school, or any facility that is owned and occupied by a government agency.

Chapter 1209, Statutes of 1989, Section 26, amended Government Code Section 65995.1[55] to expand the definition of senior citizen housing to include

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(~~d~~ e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(~~e~~ f) Nothing in this Section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

[55] Government Code Section 65995.1, as amended by Chapter 1209, Statutes of 1989, Section 26:

"(a) Notwithstanding any other provision of law, as to any development project ~~used exclusively for the housing of senior citizens~~, for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (j) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than ~~the housing of senior citizens~~ those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion,

residential care facilities and multilevel facilities for the elderly.

Chapter 1209, Statutes of 1989, Section 27, added Government Code Section 65995.2[56] to provide that manufactured homes or mobilehomes in areas where

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less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a)."

[56] Government Code Section 65995.2, as added by Chapter 1209, Statutes of 1989, Section 27:

"(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a

residence is limited to older persons as defined by the federal Fair Housing Amendments Act of 1988 will be subject to the same limits and conditions as commercial and industrial development. Subdivision (b) provides that any park or subdivision that subsequently permits the residence of persons other than older persons shall notify the appropriate school district and city or county. As a condition of the first sale, each home will pay the school district facilities fee at the current residential rate less any amount previously paid. Subdivision (c) requires compliance as a condition of closing escrow or approval for initial occupancy.

Chapter 1209, Statutes of 1989, Section 27.5, amended Government Code Section 65996[57] to add Government Code Section 53080 to the list of code Sections

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mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply."

[57] Government Code Section 65996, as amended by Chapter 1209, Statutes of 1989, Section 27.5:

"(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section ~~65928 of the Government Code~~ 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(~~a~~ 1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(~~b~~ 2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(~~c~~ 3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education

that mitigate environmental conditions for the approval of a development project.

Chapter 1217, Statutes of 1989, Section 3, amended Government Code Section 66007[58], subdivision (c), to require a legal description of the property to be included in

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Code.

(~~d~~ 4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(~~e~~ 6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(~~f~~ 7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities."

[58] Government Code Section 66007, as amended by Chapter 1217, Statutes of 1989, Section 3:

"(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the ~~applicant~~ property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recondition, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the ~~initial holder~~ property owner or lessee at the time of issuance. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the ~~building permit holder as grantor.~~ property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

the contract. Subdivision (f) was added to specify two methods of complying with a proposed construction schedule or plan: (1) the adoption of the capital improvement plan as described in Section 66002, and (2) the submittal of a five-year plan for construction and rehabilitation of school facilities. The former subdivision (f) was re-lettered as subdivision (g).

Chapter 633, Statutes of 1990, Section 2, amended Government Code Section 53080.1[59], subdivision (e), to require the employee generation estimates be based on

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(3) The contract may require the ~~building permit holder~~ property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This Section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this Section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) This Section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date."

[59] Government Code Section 53080.1, as amended by Chapter 633, Statutes of 1990, Section 2:

"(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

the estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

Chapter 633, Statutes of 1990, Section 3, amended Government Code Section 65995.1 to make technical changes.

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are ~~based on commercial and industrial factors within the district, as~~ calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper. "

Chapter 1572, Statutes of 1990, Section 15, amended Government Code Section 66000[60], subdivision (b), to exclude fees collected under redevelopment plan agreements pursuant to the Community Redevelopment Law as described in Section 33000 of the Health and Safety Code. Subdivision (d) adds other political subdivisions of the state to the definition of "local agency."

Chapter 1572, Statutes of 1990, Section 15, amended Government Code Section 66004[61] to change the reference of Chapter 13.1 to Government Code Section 66018.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section

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[60] Government Code Section 66000, as amended by Chapter 1572, Statutes of 1990, Section 14:

"(b) "Fee" means a monetary exaction other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, ~~or~~ authority, agency, any other municipal public corporation or district, or other political subdivision of the state."

[61] Government Code Section 66004, as amended by Chapter 1572, Statutes of 1990, Section 15:

"The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of ~~Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5~~ Section 66018."

66016[62]. Subdivision (a) requires a public meeting, as part of a regularly scheduled meeting, to be held prior to levying a new fee or increasing an existing fee. Notice of

[62] Government Code Section 66016, as added by Chapter 1572, Statutes of 1990, Section 20:

"(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this Section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This Section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022."

the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public, data indicating the amount of the cost required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. The local agency shall not levy a new fee or increase an existing fee to an amount which exceeds the estimated amount required to provide the service. Subdivision (b) requires that any action by a local agency to levy a new fee or to approve an increase in an existing fee shall be taken only by ordinance or resolution. Subdivision (c) allows costs incurred in conducting the meeting to be recovered from the fees charged for the service. Subdivision (d) lists the applicable code sections. Subdivision (e) requires that judicial actions to stop the ordinance or resolution shall be subject to Section 66022.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section 66017[63]. Subdivision (a) requires that any action regarding a fee on a development

[63] Government Code Section 66017, as added by Chapter 1572, Statutes of 1990, Section 20:

"(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures

project will be in accordance with the notice and public hearing procedures as described in Sections 66016 and 54986 and will be effective no sooner than 60 days following the final action. Subdivision (b) allows for an interim authorization to respond to current and immediate threats to the public health, welfare, or safety. The interim authorization requires a four-fifths vote based on findings describing the threat. The interim authorization is limited to 30 days with up to two extensions.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section 66018[64]. Subdivision (a) requires that, prior to adopting a new fee or increasing an

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specified in Section 54986 or 66016 and shall be effective no sooner that 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body."

[64] Government Code Section 66018, as added by Chapter 1572, Statutes of 1990, Section 20:

"(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this Section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

existing fee, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. The notice of time, location, and a general explanation of the matter shall be published for 10 days, in accordance with Section 6062a. Subdivision (b) allows costs incurred by a local agency in conducting the hearing to be recovered as part of the fees which were the subject of the hearing. Subdivision (c) provides that the section applies only when a specific statutory notice requirement does not apply.

Chapter 1572, Statutes of 1990, Section 20, added Government Code Section 66018.5[65] to define "local agency" to have the same meaning as Section 66000, which includes school districts.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66020[66]. Subdivision (a) allows any party to protest the imposition of fees on a

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(c) This Section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.
(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service."

[65] Government Code Section 66018.5, as added by Chapter 1572, Statutes of 1990, Section 20:
""Local agency," as used in this chapter, has the same meaning as provided in Section 66000."

[66] Government Code Section 66020, as added by Chapter 1572, Statutes of 1990, Section 22:
"(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:
(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.
(2) Serving written notice on the governing body of the entity, which notice

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shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This Section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this Section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed, This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of

residential development if they first pay the required fee amount in full, under protest, or ensure performance of the conditions, and serve written notice on the governing body stating that the payment is satisfied under protest and including the factual elements of the dispute and the legal theory forming the basis for the protest. Subdivision (d) requires that a protest be filed at the time of development approval or within 90 days after the imposition of the fees. The deadline to file a protest is 180 days. All persons are barred from any action after that time. Any party who files a protest may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed. If the court finds for the plaintiff, the local agency should refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum. Subdivision (f) provides that approval has occurred when the tentative map is approved or when the parcel map is recorded if a tentative map is not required. Subdivision (g) provides that the imposition of fees has occurred when they are imposed or levied on a specific development.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66021[67]. Subdivision (a) allows any party, on whom a fee, tax, assessment, dedication,

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this Section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this Section, when they are imposed or levied on a specific development."

[67] Government Code Section 66021, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) Any party on whom a fee, tax, assessment, dedication, reservation, or other

reservation, or other exaction has been imposed, to protest against imposed fees as provided in Sections 66020 and 66475.4. Subdivision (b) prohibits the protest of any tax or assessment levied pursuant to a principal act that contains protest procedures, or used to secure payment of bonds or other public indebtedness.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66022[68]. Subdivision (a) requires any judicial action regarding new fees or increases to an existing fee be commenced within 120 days of the effective date for the fee.

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exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest, as provided in Sections 66020 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66020 and 66475.4, Section 66475.4 shall prevail over Section 66020 to the extent of any conflict between those two Sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness."

[68] Government Code Section 66022, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this Section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This Section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014."

Subdivision (b) requires that judicial action be brought pursuant to Section 860 of the Code of Civil Procedure, which states that a public agency may bring an action in the county superior court. Subdivision (c) limits this Section to only fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66023[69]. Subdivision (a) allows any person to request an audit. The legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable for the product or service. Subdivision (b)

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[69] Government Code Section 66023, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this Section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This Section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge."

allows the local agency to recover any costs incurred during audit from the person who requested the audit. Subdivision (c) requires the audit to conform to generally accepted auditing standards. Subdivision (d) provides that this section is alternative and additional to Section 54985. Subdivision (e) states a legislative intent that this Section supersede all conflicting local laws and shall apply in charter cities. Subdivision (f) provides that this section does not grant any additional authority to any local agency to levy a fee.

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66024[70]. Subdivision (a) requires that the city, county, or district have the burden of producing evidence to establish that the development fee does not exceed the cost of

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[70] Government Code Section 66024, as added by Chapter 1572, Statutes of 1990, Section 22:

"(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this Section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation."

the service, facility, or regulatory activity in defense to a judicial action alleging the development fee to be a special tax within the meaning of Section 50076[71].

Chapter 1572, Statutes of 1990, Section 22, added Government Code Section 66025[72] to define "local agency" to include a school district.

Chapter 536, Statutes of 1991, Section 1, amended Government Code Section 65995.1[73] to add a new subdivision (b), which provides that state owned agricultural migrant worker housing is exempt from developer fees. The previous subdivision (b) was re-lettered subdivision (c), and other technical changes were made.

Chapter 1354, Statutes of 1992, Section 3, amended Government Code Section

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[71] Government Code Section 50076:
"As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes."

[72] Government Code Section 66025, as added by Chapter 1572, Statutes of 1990, Section 22:
""Local agency," as used in this chapter, means a local agency as defined in Section 66000."

[73] Government Code Section 65995.1, amended by Chapter 536, Statutes of 1991, Section 1:
"(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code."

65995[74] to add subdivision (g) which states that the section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section would become operative.

Chapter 1354, Statutes of 1992, Section 6, amended Government Code Section 65996[75] to add subdivision (c) providing that this Section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this Section shall become operative. Subdivisions (a) through (g) were reassigned to numbers (1) through (7), inclusively.

Chapter 169, Statutes of 1992, Section 1, amended Government Code Section

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[74] Government Code Section 65995, amended by Chapter 1354, Statutes of 1992, Section 3:
"(g) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative."

[75] Government Code Section 65996, amended by Chapter 1354, Statutes of 1992, Section 6:
"(c) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this Section shall become operative."

66006[76] to add subparagraph (2) to subdivision (b). The local agency shall review the information made available to the public at the next regularly scheduled public meeting not less than 15 days after the information is made available. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a

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[76] 1. Government Code Section 66006, amended by Chapter 169, Statutes of 1992, Section 1:

"(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 60 days of the close of each fiscal year, make available to the public the beginning and ending balance for the fiscal year and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (~~e~~ 3) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001 during the fiscal year.

(2) The local agency shall review ~~this~~ the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after ~~the availability of the~~ this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this Section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section ~~54997~~ 66023, including fees or charges of school districts, in accordance with that Section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities."

written request with the local agency for mailed notice of the meeting. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

Chapter 231, Statutes of 1992, Section 2, amended Government Code Section 66007 to make technical changes.

Chapter 487, Statutes of 1992, Section 1, amended Government Code Section 66016 to add Public Resources Code Section 41901 to the list of code sections to which these fees and charges apply.

Chapter 605, Statutes of 1992, Section 1, amended Government Code Section 66020[77] to add a new subdivision (f). Subparagraph (1), provides if a court grants judgment to the plaintiff, the local agency is to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the

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[77] Government Code Section 66020, as amended by Chapter 605, Statutes of 1992, Section 1:

"(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this Section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1)."

Pooled Money Investment Account during the time elapsed since the payment occurred. Subparagraph (2) provides that payment should be refunded to any other parties that filed a protest and tendered payment under the invalid portion of that same ordinance as enacted. Former subdivisions (f) and (g) were re-lettered as subdivisions (g) and (h), respectively.

Chapter 589, Statutes of 1993, Section 80, amended Government Code Section 66020 to make technical changes.

Chapter 1195, Statutes of 1993, Section 12.7, amended Government Code Section 53080.1 to make technical changes.

Chapter 983, Statutes of 1994, Section 3, amended Government Code Section 53080.4[78] to add subdivision (g). Subparagraph (1) allows a school district to waive a

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[78] Government Code Section 53080.4, as amended by Chapter 983, Statutes of 1992, Section 3:

"(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 53080, this Section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this Section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of

developer fee or to grant permission to pay the fee in installments where a home in a mobilehome park space located in one school district is moved to a space in another school district where it would be subject to a fee for the new district and the owner is 55 years or older and a member of a lower income household. Fees paid in installments may be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code. Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien.

Chapter 1228, Statutes of 1994, Section 6, amended Government Code Section

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the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2."

65971[79] to change the office designated to receive a completed application from the Office of Local Assistance to the Office of Public School Construction.

Chapter 1228, Statutes of 1994, Section 7, amended Government Code Section 65974 to make technical changes.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section

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[79] Government Code Section 65971, as amended by Chapter 1228, Statutes of 1994, Section 6:

"(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of ~~Local Assistance~~ Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this Section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors."

66030[80] to state the legislative intent to establish formal mediation processes for land use disputes.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section

[80] Government Code Section 66030, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts."

66031[81]. Subdivision (a) lists the superior court actions that will be subject to

[81] Government Code Section 66031, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including

mediation. These subjects are: (1) any decision of a public agency of any development project; (2) any decision of a public agency made pursuant to the California Environmental Quality Act; (3) the failure of a public agency to meet the time limits specified in the Permit Streamlining Act; (4) in the Subdivision Map Act; (5) fees determined pursuant to Sections 53080 to 53082 or Section 66000; (6) the adequacy of a general plan or specific plan adopted pursuant Section 65100; (7) the validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act; or (8) the adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law. Subdivision (b) provides that the court may invite the parties to consider a mediator within 5 days after the deadline for either the respondent or defendant to file its reply to an action. Subdivision (c) lists the mediator selection considerations as the council of governments having jurisdiction of the dispute, any sub-regional or countywide council of governments in the county, the Office of Permit Assistance within the Trade and Commerce Agency, or any other person or agency with experience in the mediation of land use issues. Subdivision (d)

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those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this Section shall preclude the parties from using mediation at any other time while the action is pending."

requires the parties to notify the court of their decision of mediator within 30 days. If the parties choose not to use a mediator or cannot agree on one, the action shall proceed. The court shall not be draw any implication, favorable or otherwise by a decision not to use mediation but mediation remains an option while the action is pending.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66032[82]. Subdivision (a) requires all time limits shall be tolled during mediation. Subdivision (b) prohibits any meeting held by a mediator that involve less than a quorum of a legislative body or a state body pursuant to the Ralph M. Brown Act or the

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[82] Government Code Section 66032, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for an another 90-day period.

(e) A mediator shall not file, and a court shall not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise, in writing.

(f) Sections 703.5 and 1152.5 of the Evidence Code shall apply to any mediation conducted pursuant to this chapter."

Bagley-Keene Open Meeting Act. Subdivision (c) requires the mediator act in accordance with the provisions of current law. Subdivision (d) limits the mediation period to 90 days unless the parties arrive at a settlement and implement it or agree by written stipulation to extend the mediation for another 90 day period. Subdivision (e) requires all parties to expressly agree, in writing, to any declaration or finding, excluding a required statement of agreement or non-agreement. Subdivision (f) applies the rules of Evidence Code Sections 703.5 and 1152.5 to any mediation.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66033[83]. Subdivision (a) requires the mediator to file a report with the Office of Permit Assistance at the end of mediation. The report will state the title of the action, the names of the parties, and an estimate of the costs avoided by using mediation instead of litigation. The purpose of the report is to collect information as needed by the Office of Permit Assistance for its report to the Legislature.

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[83] Government Code Section 66033, as added by Chapter 300, Statutes of 1994, Section 1:

"(a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Section 1152.5 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this Section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036."

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66034[84] to provide that, in the event of a mediation failure, the court may schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66035[85] to allow the Judicial Council to adopt rules, forms, and standards as necessary.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66036[86] to require a report from the Office of Permit Assistance within the Trade and Commerce Agency and the Judicial Council regarding the implementation of this

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[84] Government Code Section 66034, as added by Chapter 300, Statutes of 1994, Section 1:
"If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court."

[85] Government Code Section 66035, as added by Chapter 300, Statutes of 1994, Section 1:
"The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter."

[86] Government Code Section 66036, as added by Chapter 300, Statutes of 1994, Section 1:
"By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter."

chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including councils of governments. The report may recommend changes to this chapter.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66037[87] to provide a sunset date of January 1, 2002 for this chapter.

Chapter 686, Statutes of 1995, Section 6.5, amended Government Code Section 66016[88], subdivision (a) to provide that the public meeting, prior to levying a new fee or

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[87] Government Code Section 66037, as added by Chapter 300, Statutes of 1994, Section 1:

"No action filed on or after January 1, 2002, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, 2002, extends this date or deletes this Section."

[88] Government Code Section 66016, as amended by Chapter 686, Statutes of 1995, Section 6.5:

"(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this Section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in

service charge shall must be open. Subdivision(b) prohibits the legislative body of a local agency from delegating the authority to adopt a new fee or to increase a fee. Subdivision (d) adds Section 51287 of the Government Code to the sections to which the section applies.

Chapter 686, Statutes of 1995, Section 7, amended Government Code Section 66031[89] to add the validity of any zoning decision to the list of subjects for mediation.

Chapter 277, Statutes of 1996, Sections 7, 8, 9, 10, 11, 12, and 13 repealed the following Government Code sections, Section 3 restated and renumbered these sections into the Education Code.

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excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This Section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this Section shall be brought pursuant to Section 66022."

[89] Government Code Section 66031, as amended by Chapter 686, Statutes of 1995, Section 7:

"(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800)."

Former Government Code Section:	Renumbered Education Code:
7) 53080	3) 17620
8) 53080.1	3) 17621
9) 53080.15	3) 17622
10) 53080.2	3) 17623
11) 53080.3	3) 17624
12) 53080.4	3) 17625
13) 53080.6	3) 17626

Chapter 277, Statutes of 1996, Section 14, repealed Government Code Section 53081.

Chapter 549, Statutes of 1996, Section 1, amended Government Code Section 66000[90], subdivision (b), to provide that taxes or special assessments on either broad

[90] Government Code Section 66000, amended by Chapter 549, Statutes of 1996, Section 1:

"(b) "Fee" means a monetary exaction other than a tax or special assessment, ~~which~~ whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code."

class of projects, or specific project, are not included within the definition of "fee" for this chapter.

Chapter 799, Statutes of 1996, Section 6.7, added Government Code Section 66000.5[91] to name Chapters 5, 6, 7, 8, and 9, the "Mitigation Fee Act."

Chapter 569, Statutes of 1996, Section 1, amended Government Code Section 66001[92], subdivision (d) to provide that findings need not be submitted until the fifth

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[91] Government Code Section 66000.5, added by Chapter 799, Statutes of 1996, Section 6.7:

"This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act."

[92] Government Code Section 66001, amended by Chapter 569, Statutes of 1996, Section 1:

"(d) ~~The~~ For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings ~~once each fiscal year~~ with respect to ~~any~~ that portion of the ~~fee~~ account or fund remaining unexpended ~~or uncommitted in its account five or more years after deposit of the fee to identify~~, whether committed or uncommitted:

(1) Identify the purpose to which the fee is to be put ~~and to demonstrate~~.

(2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in ~~the~~ possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

fiscal year after first deposit. These findings must be determined even when the fees are committed. Additional required information includes the sources and amounts of funding anticipated to complete financing, and the approximate dates when those anticipated funds will be deposited into the appropriate account or fund. If all of the information cannot be determined, the money should be refunded. When sufficient funds have been collected to complete financing on incomplete public improvements, the local agency shall identify, within 180 days, an approximate date by which the construction of the public improvement will be commenced. If construction does not

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(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended ~~or uncommitted~~ portion of the fee, and any interest accrued thereon, ~~for which need cannot be demonstrated pursuant to subdivision (d). A~~ By means consistent with the intent of this Section, a local agency may refund the unexpended ~~or uncommitted~~ revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means ~~consistent with the intent of this Section.~~ The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended ~~or uncommitted~~ revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed."

commence, the local agency shall refund the unexpended portion of the fee and interest. Subdivision (f) removes the reference to uncommitted revenues.

Chapter 569, Statutes of 1996, Section 2, amended Government Code Section 66006[93], subdivision (b), to make changes to the report that local agencies must publish

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[93] Government Code Section 66006, as amended by Chapter 569, Statutes of 1996, Section 2:

"(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within ~~60~~ 180 days ~~of~~ after the ~~close~~ last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance ~~for the fiscal year and the fee, interest, and other income~~ of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of ~~expenditure by public facility and~~ the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (~~3~~ e) of

for each capital facilities account. The due date for the report is extended from 60 days to 180 days after the last day of the fiscal year. The information to be reported now includes: a description of the type of fee in the account, the amount of the fee, the beginning and ending balance, the amount of fees collected, the interest earned, identification of the public improvement on which fees were expended, the percentage of the cost of the improvement funded by fees, the approximate date that construction

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Section 66001 and any allocations pursuant to subdivision (f) of Section 66001 ~~during the fiscal year~~.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this Section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that Section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that ~~subdivision (a)~~ this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance."

will commence, a description of any inter-fund transfers or loans, and the amount of any refunds. Subdivision (f) was added to provide that the public improvement must be identified at the time that the local agency imposes a fee.

Chapter 549, Statutes of 1996, Section 2, amended Government Code Section 66020[94], subdivision (d), to provide that each local agency shall provide a notice in

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[94] Government Code Section 66020, amended by Chapter 549, Statutes of 1996, Section 2:

"(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a ~~residential housing~~ development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development ~~of the residential housing development~~ project. This Section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed ~~residential housing~~ development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this Section,

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that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a ~~residential housing development.~~ development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a ~~residential housing~~ development project by a local agency within 180 days after the ~~date~~ delivery of the ~~imposition~~ notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions

writing, at the time of time of the project approval or at the time of the imposition of the fees, a statement of the amount of the fees and notification that the 90-day approval period, in which the applicant may protest, has begun.

Chapter 799, Statutes of 1996, Section 7 amended Government Code Section 66031[95] to add the validity of any decision made pursuant to Section 21670 of the Public Utilities Code to the list of subjects for mediation. This Section deals with airport land use.

Chapter 772, Statutes of 1997, Section 7, amended Government Code Section 66032 to remove subdivision (f), where a mediator is restricted from any filing unless expressly agreed to, in writing, by all parties.

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to be imposed on a ~~residential housing~~ development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this Section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this Section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this Section, when they are imposed or levied on a specific development."

[95] Government Code Section 66031, as amended by Chapter 799, Statutes of 1997, Section 7:

"(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code."

Chapter 772, Statutes of 1997, Section 8, amended Government Code Section 66033 to make technical changes.

Chapter 407, Statutes of 1998, Section 12, amended Education Code Section 17620[96], subdivision (a)(1)(D), to add mobile homes to construction eligible for the

[96] Education Code Section 17620, as amended by Chapter 407, Statutes of 1998, Section 12:

"(a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any ~~development project~~ construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of ~~a~~ commercial or industrial ~~development project, as defined in Section 65995 of the Government Code,~~ construction shall not be deemed to include the square footage of any structure existing on the site of that ~~development project~~ construction as of the date the first building permit is issued for any portion of that ~~development project~~ construction.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space~~, as defined in Section 65995 of the Government Code,~~ exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "~~development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for~~ "construction" ~~or reconstruction, but not a permit to operate.~~ and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for

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any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential ~~development project~~ construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that ~~project~~ residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code ~~In addition,~~, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. ~~(b) No~~ For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any ~~development~~ construction absent certification by the appropriate school district ~~of compliance by~~ that ~~development project with~~ any fee, charge, dedication, or other requirement levied by the governing board of that school district ~~pursuant to subdivision (a)~~ has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the ~~development project.~~

imposition of developer fees. Subdivision (a)(5) provides that fees may be used to prepare school facilities needs analysis as described in Section 65995.6 of the Government Code. Subdivision (b) requires the school district to provide immediate certification to construction projects that have complied with the payment of fees.

Chapter 407, Statutes of 1998, Section 19, amended Government Code Section 65995[97], subdivision (a), to provide that development fees may only be imposed under

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construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, ~~no~~ a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential ~~development project~~ construction absent certification by the appropriate school district of compliance by that ~~development project~~ residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621."

[97] Government Code Section 65995, as amended by Chapter 407, Statutes of 1998, Section 19:

"(a) Except for a fee, charge, dedication, or other requirement authorized under Section ~~53080~~17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), ~~no~~ a fee, charge, dedication, or other requirement ~~shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080,~~ for the construction or reconstruction of school facilities ~~(b) In no event shall~~ may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any

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fees, charges, dedications, or other requirements authorized under Section ~~53080~~17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) ~~One dollar and fifty cents ($1.50~~ In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space~~, in the case of any residential development~~. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area.

The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial ~~development~~ construction, ~~twenty-five~~ thirty-one cents ($0.~~25~~ 31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the ~~development~~ construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in ~~1990~~ 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. ~~The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.~~

(c) (1) Notwithstanding any other provision of law, during the term of ~~any~~ a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before

January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential ~~development~~ construction, neither Section ~~5308~~17620 of the Education Code nor this chapter applies to that residential ~~development. (2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the~~ construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement ~~prescribed in any local ordinance in existence on that date and applicable to the project~~ exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

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(B) A building permit is issued before January 1, 2000.

(d) For purposes of ~~Section 53080 and~~ this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial ~~development~~. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial ~~development~~ construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the ~~subject of the~~ financing of school facilities ~~with development fees is a matter~~ and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of ~~mandatory development fees and other development requirements~~ requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities ~~finance~~, to the exclusion of all ~~local measures on the subject~~ other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this Section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 ~~to finance~~, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community

Education Code Section 17620. Subdivision (b) increases the square foot rate for residential construction from $1.50 to $1.93. Residential construction projects now include manufactured and mobile homes. Commercial and industrial construction

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facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities.

~~(g) This Section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this Section shall become operative.~~

~~(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate~~ For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (l), and this subdivision, "school facilities" means any school-related consideration relating to a school ~~district that any fee, charge, dedication~~ district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(l) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this Section or pursuant to Section 65995.5 or 65995.7, as applicable."

square foot rates are increased from $0.25 to $0.31. These rates will be increased in 2000 and every two years thereafter. Subdivision (c) provides that any residential construction that results from a contract between a person and a school district is not affected by this act during the term of the contract. Construction not under contract with the school district, between the dates of November 4, 1998 and January 1, 2000,should pay the original square footage rates. After January 1, 2000, construction not under contract will not be required to pay a fee exceeding the square foot rates stated here or the district's increased amounts as allowed by Sections 65995.5 or 65995.7.

The increased fees for construction not subject to a contract can be avoided if a tentative map was approved before November 4, 1998 or the building permit was approved before January 1, 2000. Subdivision (d) defines "construction" as both new construction and reconstruction of existing buildings. Subdivision (e) defines "school facilities" as any school-related consideration relating to a school district's ability to accommodate enrollment. Subdivision (f) provides that this Section does not limit or prohibit the use of Section 53311, "Mello-Roos Community Facilities Act of 1982", but also, does not require its use as a condition of approval if the purpose of the community facilities district is to finance school facilities. Subdivision (g) disallows the refusal of Section 53311 special taxes as a factor in considering the development of real property. Developments that are covered by special taxes under Section 53311 will be credited for the present value of the special taxes against developer fees imposed. Subdivision (h) states that payment of fees fully mitigates against future legislation for the provision of adequate school facilities. Subdivision (l) prohibits a local agency from refusing to

approve legislation on the basis of a person's refusal to provide school facilities mitigation that exceed the amounts authorized.

Chapter 407, Statutes of 1998, Section 20, added Government Code Section 65995.5[98]. Subdivision (a), provides an alternative fee amount imposed on residential

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[98] Government Code Section 65995.5, added by Chapter 407, Statutes of 1998, Section 20:

"(a) The governing board of a school district may impose the amount calculated pursuant to this Section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(I) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries

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of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(I) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district' s local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating

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whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this Section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section or Section 65995.7.

(e) Nothing in this Section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) A fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code or pursuant to Chapter 4.7 (commencing with Section 65970) shall be expended solely on the school facilities identified in the needs analysis

construction. Subdivisions (b)(1), (b)(2), and (b)(3) describe the eligibility requirements to impose a fee up to the amount calculated in this Section. The district must apply to the State Allocation Board and meet requirements set forth in Chapter 12.5 of the Education Code, known as the Leroy F. Greene School Facilities Act of 1998. The district must conduct a school facility need analysis. Until January 1, 2000, the district must satisfy at least one of the requirements set forth in subparagraphs (A) to (D). On and after January 1, 2000, the district must satisfy at least two of the requirements set forth in subparagraphs (A) to (D). Subparagraph (A) requires a "substantial enrollment" in a multi-track year-round schedule. Substantial enrollment is at least 30 percent of kindergarten and grades 1 to 6 for unified or elementary school districts. A high school district has met the requirements of this paragraph if at least 30 percent of the high school district's pupils are on a multitrack year-round schedule or at least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12. Subparagraph

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as being attributable to projected enrollment growth from the construction of new residential units.

(g) "Residential units" and "residences" as used in this Section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobile homes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed two times the amount funded by the State Allocation Board."

(B) requires that the district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes. Subparagraph (C) requires that the district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent prior to November 4, 1998 or 30 percent after November 4, 1998, of the district' s local bonding capacity. Subparagraph (D) requires that at least 20 percent of the teaching stations within the district are relocatable classrooms. Subdivision (c) provides a formula to determine the maximum fee authorized. The number of unhoused pupils identified in the school facilities needs analysis is multiplied by fixed amounts for each of elementary, middle school, and high school pupils, as described in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h). The full amount of local funds is to be subtracted from this amount. This result shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party. Subdivision (d) provides that a school district that has a common territorial jurisdiction with a district that imposes a fee up to the amount calculated pursuant to this Section or Section 65995.7, may not impose a fee on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would

be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this Section or Section 65995.7. Subdivision (e) assures that nothing in this Section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities. Subdivision (f) requires fees to be expended solely on the school facilities identified in the needs analysis. Subdivision (g) defines "residential units" and "residences" as single-family detached housing units, single-family attached housing units, manufactured homes and mobile homes, condominiums, and multifamily housing units. Subdivision (h) limits site acquisition costs to two times the amount funded by the State Allocation Board.

Chapter 407, Statutes of 1998, Section 21, added Government Code Section 65995.6[99]. Subdivision (a) requires the governing board of a school district to

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[99] Government Code Section 65995.6, as added by Chapter 407, Statutes of 1998, Section 21:

"(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with

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Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same

perform a school facilities needs analysis. The analysis will project the number of unhoused elementary, middle, and high school pupils generated by new residential units. The projection should be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit (single family detached, single family attached, or multifamily unit) to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multi-phased development projects, that may modify the historical figures. The existing school building capacity shall be calculated pursuant to the Leroy F. Greene School Facilities Act of 1998. If a district has a substantial enrollment on a multi-track year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multi-track year-round schedule. Subdivision (b) requires the governing board to identify and consider three issues when

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manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this Section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this Section.

(h) Notice and hearing requirements other than those provided in this Section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this Section."

determining the funds necessary to meet its facility needs. First, any surplus property owned by the district that can be used as a school-site or that is available for sale to finance school facilities. Second, the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities. Third, local sources other than fees imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units. Subdivision (c) requires the governing board to adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until it is in its final form and has been made available to the public for a period of not less than 30 days. During that time, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the governing board shall respond to written comments it receives. Subdivision (d) provides that notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revisions, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs

analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision. Subdivision (e) allows the school facilities needs analysis to be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis. Subdivision (f) requires that a fee in an amount authorized by this Section or Section 65995.7, be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. The resolution takes effect immediately after adoption. Subdivision (g) provides that these actions are not subject to the environmental concerns of Public Resources Code 21000. Subdivision (h) provides that notice and hearing requirements other than those provided in this Section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

Chapter 407, Statutes of 1998, Section 22, added Government Code Section 65995.7[100]. Subdivision (a) allows a school district to increase the alternative fee

[100] Government Code Section 65995.7, as added by Chapter 407, Statutes of 1998, Section 22:

"(a) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount

pursuant to Government Code Section 65995.5 where no state funds are available and cannot be subtracted from the amount calculated in subdivision (c) of Section 65995.5. State funds are not available if the State Allocation Board is no longer approving apportionments for new construction due to a lack of funds available for new construction. In this case, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of

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calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this Section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this Section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable."

each house. Subdivision (b) allows a governing board to offer a reimbursement to the person subject to the fee when the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. The person may elect the reimbursement be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district. Subdivision (c) also allows a governing board to offer the person subject to the fee an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon. Subdivision (d) permits a governing board to assign the rights granted by the reimbursement election or the alternative reimbursement agreement.

Chapter 407, Statutes of 1998, Section 23, amended Government Code Section 65996[101], subdivision (a), to change the list of methods for mitigating impacts on school

[101] Government Code Section 65996, as amended by Chapter 407, Statutes of 1998, Section 23:

"(a) ~~The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 53080, pursuant to~~

Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code~~:~~

~~(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).~~

~~(2) Chapter 25 (commencing with Section 17785) of Part 10~~, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

facilities to only Education Code Section 17620. Subdivision (b) relies on this Section

~~(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.~~

~~(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.~~

~~(5) Section 53080 of the Government Code.~~

~~(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.~~

~~(7~~2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 ~~of the Government Code.~~

~~(b) A public agency may not, pursuant to.~~

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code or ~~Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of~~ any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities

~~(c~~ are inadequate.

(c) For purposes of this Section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this Section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this Section.

(f) This Section shall become inoperative ~~on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date~~ during any time that Section 65997 is operative and this Section shall become operative at any time that Section 65997 is inoperative."

as a full and complete school facilities mitigation and prohibits refusal of development on the basis that school facilities are inadequate. Subdivision (c) defines "school facilities" as any school-related consideration relating to a school district's ability to accommodate enrollment. Subdivision (d) allows local agencies to utilize other methods to provide school facilities including property assessment in conjunction with ad valorum taxes or qualified special taxes. Subdivision (e) also allows the agency to mitigate the impacts of land use approval for reasons other than the need for school facilities. Subdivision (f) ties the operation of this Section to that of Section 65997.

Chapter 407, Statutes of 1998, Section 24, added Government Code Section 65997[102]. Subdivision (a) lists the code Sections that mitigate the environmental effects

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[102] Government Code Section 65997, as added by Chapter 407, Statutes of 1998, Section 24:

"(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).
(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.
(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.
(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.
(5) Section 17620 of the Education Code.
(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.
(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of

related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620 of the Education Code pursuant to Public Resources Code Section 21000. The Government Code Sections are 53311, known as the "Mello-Roos Community Facilities Act of 1982"; and 65970. The Education Code Sections are 17000, 17085, 17170, 17430, and 17620. Subdivision (b) states that no project will be denied on the basis of the adequacy of school facilities pursuant to Public Resources Code Section 21000 or Government Code Section 66410. Subdivision (c) says that this Section will become operative on or after any statewide election in 2006 if a bond

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this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This Section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2) (A) This Section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this Section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7."

measure with authority to fund construction of K through 12 public school facilities is submitted and fails to be approved by voters. It will become inoperative if another bond measure is approved. Subdivision (d) allows a public agency to deny or refuse to approve a legislative act involving the development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee in excess of that levied or imposed pursuant to Section 65995, 65995.5 or 65995.7

Chapter 407, Statutes of 1998, Section 25, added Government Code Section 65998[103]. Subdivision (a) indicates that neither this chapter nor Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite. Subdivision (b) also provides that neither Chapter 4.9 nor Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

Chapter 689, Statutes of 1998, Section 1.3, amended Education Code Section

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[103] Government Code Section 65998, as added by Chapter 407, Statutes of 1998, Section 25:

"(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities."

17621[104], subdivision (a), to remove references to repealed Sections 54994.1 and54992 of the Government Code and to insert the name "California Environmental Quality Act" to the Public Resources Code Section 21000.

Chapter 689, Statutes of 1998, Section 6.5, amended Government Code Section 66007 to make technical changes.

Chapter 689, Statutes of 1998, Section 7, amended Government Code Section 66021 to make technical changes.

Chapter 300, Statutes of 1999, Section 1, amended Education Code Section 17620[105] to add a subparagraph (ii) to subdivision (C) which prohibits the imposition of a levy on any residential construction that consists only of seismic retrofitting

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[104] Education Code Section 17621, as amended by Chapter 689, Statutes of 1998, Section 1.3:

"(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code~~, with Section 54994.1 of the Government Code, and with the procedures for mailed notice set forth in Section 54992 of the Government Code.~~ The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b)."

[105] Education Code Section 17620, as amended by Chapter 300, Statutes of 1999, Section 1:

"(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code."

improvements to an existing building or structure, as set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

Chapter 858, Statutes of 1999, Section 16, amended Government Code Section 65995.5[106], subdivision (f), to allow expenditure of fees for school facilities identified in the needs analysis due to new residential units.

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[106] Government Code Section 65995.5, as amended by Chapter 858, Statutes of 1999, Section 16:

"(f) ~~A~~ Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under ~~Section 17620 of the Education Code or pursuant to Chapter 4.7 (commencing with Section 65970)~~ this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units.

This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and ~~mobile homes~~ mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed ~~two times~~ the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs."

Chapter 858, Statutes of 1999, Section 17, amended Government Code Section 65995.6[107], subdivision (a), to provide that existing school building capacity should be recalculated by the school district during any needs analysis revision.

Chapter 135, Statutes of 2000, Section 33, amended Education Code Section 17620 to make technical changes.

Chapter 33, Statutes of 2002, Section 33, amended Government Code Section 65995.7[108], subdivision (a), to provide that the board should not consider whether funds

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[107] Government Code Section 65995.6, as amended by Chapter 858, Statutes of 1999, Section 17:

"(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule."

[108] Government Code Section 65995.7, as amended by Chapter 33, Statutes of 2000, Section 33:

"(a) (1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may

are available, or whether apportionments are preliminary or final pursuant to Education

increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this Section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

For the purposes of making this determination, the board shall not consider whether funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this Section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this Section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable."

Code Section 17078.10, "Critically Overcrowded School Facilities Program". Subparagraph (2) was added to subdivision (a) to define effective dates. This section becomes operative only if voters rejected the Kindergarten University Public Education Facilities Bond Act of 2002 on November 5, 2002 or after the 2004 direct primary election.

Chapter 1016, Statutes of 2002, Section 9, amended Government Code Section 66037[109] to extend this chapter until January 1, 2006.

PART III. STATEMENT OF THE CLAIM

Section 1. COSTS MANDATED BY THE STATE

The Statutes and the Government and Education Code Sections referenced in this test claim result in school districts and county offices of education incurring costs mandated by the state, as defined in Government Code Section 17514[110], by creating new state-mandated duties related to the uniquely governmental function of providing

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[109] Government Code Section 66037, as amended by Chapter 1016, Statutes of 2002, Section 9:

"No action filed on or after January 1, ~~2002~~ 2006, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, ~~2002~~ 2006, extends this date or deletes this Section."

[110] Government Code Section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

public services and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[111]

The new duties mandated by the state upon school districts and county offices of education require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A1) Pursuant to Education Code Section 17620, subdivision (a)(1), to establish policies and procedures to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities. Levies may be applied (a)(1)(A), to new commercial and industrial construction, (a)(1)(B), to new residential construction, (a)(1)(C)(i), to other residential construction with an increase in assessable space of at least 500 square feet, and (a)(1)(D), to the location, installation, or occupancy of manufactured homes and mobilehomes.

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[111] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

A2) Pursuant to Education Code Section 17620, subdivision (a)(4), to enter a contractual agreement with the appropriate city or county to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision.

A3) Pursuant to Education Code Section 17620, subdivision (a)(5), to expend the fees or other consideration collected pursuant to this section for the costs of performing any study or otherwise making the findings and determinations required, or in preparing the school facilities needs analysis.

A4) Pursuant to Education Code Section 17620, subdivision (a)(5), to retain no more than 3 percent of the fees collected in that fiscal year for reimbursement of the administrative costs incurred in collecting the fees. Where costs incurred exceed that amount, payment of that excess compensation shall be made from other revenue sources available to the school district

A5) Pursuant to Education Code Section 17620, subdivisions (b) and (c), to issue certification that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. A city or county, whether general law or chartered, may not issue a building permit or certificate of occupancy for any construction absent certification by the

appropriate school district.

A6) Pursuant to Education Code Section 17620, subdivision (d), to notify a city or county of the adoption of, or increase in, the fee, charge, dedication, or other requirement.

B1) Pursuant to Education Code Section 17621, subdivision (a), to enact a resolution adopting or increasing a fee, charge, dedication, or other requirement for application to residential, commercial, or industrial development, as these terms are defined in Section 66000 of the Government Code.

B2) Pursuant to Education Code Section 17621, subdivision (b), to adopt, by a four-fifths vote of the governing board, an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety.

B3) Pursuant to Education Code Section 17621, subdivision (c), to transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement.

B4) Pursuant to Education Code Section 17621, subdivision (d), to comply with procedures set forth in Section 66021 of the Government Code in

response to a protest of the establishment or imposition of a fee, charge, dedication, or other by any party on whom a fee, charge, dedication, or other requirement has been directly imposed.

B5) Pursuant to Education Code Section 17621, subdivision(e), to make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district utilizing employee generation estimates based upon commercial and industrial factors within the district or upon the applicable employee generation estimates. Provide a process that permits the party against whom the fee, charge, dedication, or other requirement, on the basis of a category of commercial or industrial development, is to be imposed the opportunity for a hearing to appeal that imposition.

C1) Pursuant to Education Code Section 17622, subdivision (a), to restrict any fee, charge, dedication, or other requirement to be levied upon any greenhouse or other space that is covered or enclosed for agricultural purposes, without making a finding, supported by substantial evidence, of both of the following: (1) the amount of the proposed fees or other requirements and the location of the dedicated land bear a reasonable relationship and are limited to the needs of the community for elementary

or high school facilities caused by the development, and (2) the amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

C2) Pursuant to Education Code Section 17622, subdivision (c), in determining the amount of the fees or other requirements to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied. The governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

D1) Pursuant to Education Code Section 17623, subdivision (a), to distribute fee revenue between two nonunified school districts having common

territorial jurisdiction by entering into an agreement specifying the allocation of fee revenue and the duration of the agreement.

D2) Pursuant to Education Code Section 17623, subdivision (a), to transmit a copy of that agreement by each district to the State Allocation Board.

D3) Pursuant to Education Code Section 17623, subdivision (b), to jointly submit the dispute, in the event the affected school districts are unable to reach an agreement, to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

E) Pursuant to Education Code Section 17624, to repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected for a project that failed to commence construction prior to building permit expiration, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

F1) Pursuant to Education Code Section 17625, to apply a fee, charge, dedication, or other form of requirement levied by the governing board of a school district to any manufactured home or mobilehome when it is the initial location, installation, or occupancy of the manufactured home or

mobilehome within the school district, the space or site is one on which no other manufactured home or mobilehome was previously located, installed, or occupied, and the construction of the pad or foundation system commenced after September 1, 1986.

F2) Pursuant to Education Code Section 17625, subdivision (b), to require compliance with any fee, charge, dedication, or other form of requirement prior to the close of escrow, or the approval of the manufactured home or mobilehome for occupancy.

F3) Pursuant to Education Code Section 17625, subdivision (d), to apply toward the payment of any fee or other requirement to a permanent residential structure the amount of fee or other requirement levied against any manufactured home or mobilehome that was previously on the same lot.

F4) Pursuant to Education Code Section 17625, subdivision (e), to immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

F5) Pursuant to Education Code Section 17625, subdivision (g), to permit a fee or other requirement be waived or paid in installments whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district. The fee is to be secured as a lien perfected against the mobilehome or manufactured home. Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien.

G) Pursuant to Education Code Section 17626, subdivision (a), to restrict the levy of a fee, charge, dedication, or other requirement applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed.

H1) Pursuant to Government Code Section 65971, subdivision (a), to notify the city council or board of supervisors of the city or county within which the school district is located if conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal

functioning of educational programs and the reason for the existence of those conditions, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

H2) Pursuant to Government Code Section 65971, subdivision (b), to specify the mitigation measures considered by the school district. Complete to application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Make the findings available to the public for 60 days after the date of receipt by the city or county. The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

I) Pursuant to Government Code Section 65972, to assist the city council or board of supervisors, where conditions of overcrowding exist, in determining if there are specific overriding fiscal, economic, social, or environmental factors which would benefit the city or county, thereby justifying the approval of a residential development.

J1) Pursuant to Government Code Section 65973, subdivision (a), to determine if "conditions of overcrowding", that the total enrollment of a school, including enrollment from proposed development, exceeds the

capacity of the school as determined by the governing body of the district, exists.

J2) Pursuant to Government Code Section 65973, subdivision (b), to evaluate "reasonable methods for mitigating conditions of overcrowding" such as agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

K1) Pursuant to Government Code Section 65974, subdivision (a), where overcrowded conditions exist, to assist a city, county, or city and county that may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, by providing information regarding all of the following: (1) the general plan provides for the location of public schools, (2) the ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement, (3) the land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related

facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities, (4) the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. The value of the land to be dedicated or the amount of fees to be paid, or both, will not exceed the amount necessary to pay five annual lease payments for the interim facilities, and (5) a finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

K2) Pursuant to Government Code Section 65974, subdivision (b), to consider the methods for mitigating the conditions of overcrowding.

K3) Pursuant to Government Code Section 65974, subdivision (c), to collect the payment of fees at the time the building permit is issued or at a later time as may be specified in the ordinance.

K4) Pursuant to Government Code Section 65974, subdivision (e), to determine developer fees under the school facilities master plan. Have on file with the Office of Public School Construction, and actively pursue in

good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

L) Pursuant to Government Code Section 65974.5, to expend those funds, collected pursuant to an ordinance dated before September 1, 1986, for any of the construction or reconstruction purposes authorized under Section 53080 / 17620, where the governing board has first held a public hearing on the subject of the proposed expenditure.

M1) Pursuant to Government Code Section 65975, subdivision (a), whenever a school district has received approval for a project, under the State School Building Lease-Purchase Law of 1976, to use all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project.

M2) Pursuant to Government Code Section 65975, subdivision (b), whenever a school district has received approval for a project, under the State School Building Lease-Purchase Law of 1976, to use the fair market value of the land to provide all or a portion of its 10 percent of the school project. Construct the capital outlay project on the land used to make the match, and to provide the full 10 percent of the project cost at one time.

N) Pursuant to Government Code Section 65976, to submit a schedule to the city council or board of supervisors specifying how the school district will

use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

O) Pursuant to Government Code Section 65978, to maintain a separate account for any fees paid. File a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. Specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. File this report by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council. Request a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council. Waive any performance of the payment of fees or the dedication of land during the time that the report has not been filed in the manner prescribed in this section.

P1) Pursuant to Government Code Section 65979, subdivision (a), where it is less than one year after receipt of an apportionment pursuant to the Leroy

F. Greene State School Building Lease-Purchase Law of 1976, to assist the city or county in determining that during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development, and that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

P2) Pursuant to Government Code Section 65979, subdivision (b), to return any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding.

Q) Pursuant to Government Code Section 65981, to submit a recommendation that fees for providing interim facilities are to be assessed on a development as a condition of city or county approval of a subdivision within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

R) Pursuant to Government Code Section 65995, subdivision (b), 65995.1, 65995.2 to calculate the amount of a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities as one dollar and ninety-three cents ($1.93) per square foot of assessable

residential space, as calculated by the building department of the city or county issuing the building permit. Calculate the amount as thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space for commercial, or industrial projects, agricultural projects, or senior citizen occupied mobilehomes, as calculated by the building department of the city or county issuing the building permit.

S1) Pursuant to Government Code Section 65995.5, subdivision (a), to impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

S2) Pursuant to Government Code Section 65995.5, subdivision (b), to make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. Conduct and adopt a school facility needs analysis pursuant to Section 65995.6. Qualify as a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule, or at least 30 percent of the high school district's pupils are on a multitrack year-round schedule, or at least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12,

inclusive, are enrolled in multitrack year-round schools. Qualify by having placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast. Qualify by having issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes, and revenues received pursuant to the Community Redevelopment Law, or have issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes, and revenues received pursuant to the Community Redevelopment Law. Qualify by having at least 20 percent of the teaching stations within the district as relocatable classrooms.

S3) Pursuant to Government Code Section 65995.5, subdivision (c), to calculate the maximum square foot fee, charge, dedication, or other requirement as: (1) the number of unhoused pupils identified in the school facilities needs analysis multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10; (2) this sum shall be added to the site acquisition and development cost; (3) the full amount of local funds the governing board has dedicated to facilities necessitated by new

construction shall be subtracted from this amount; and (4) the resulting amount shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

S4) Pursuant to Government Code Section 65995.5, subdivision (f), to expend these fees solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units.

T1) Pursuant to Government Code Section 65995.6, subdivision (a), to conduct a school facilities needs analysis to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those

anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. Recalculate the existing school building capacity as part of any revision of the needs analysis.

T2) Pursuant to Government Code Section 65995.6, subdivision (b), to identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities. Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities. Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

T3) Pursuant to Government Code Section 65995.6, subdivision (c), to adopt the school facility needs analysis by resolution at a public hearing, after it is in its final form and has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Respond to written comments it receives from the public regarding the school facilities needs analysis.

T4) Pursuant to Government Code Section 65995.6, subdivision (d), to publish a notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. Charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

T5) Pursuant to Government Code Section 65995.6, subdivision (e), to revise the school facilities needs analysis at any time in the same manner, subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

T6) Pursuant to Government Code Section 65995.6, subdivision (f), to adopt a fee, charge, dedication, or other requirement by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis.

U1) Pursuant to Government Code Section 65995.7 (a), to increase the alternative fee, charge, dedication, or other requirement if state funds for new school facility construction are not available.

U2) Pursuant to Government Code Section 65995.7 (b), to offer a reimbursement election to the person subject to the fee, charge,

dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing.

U3) Pursuant to Government Code Section 65995.7 (c), to offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

U4) Pursuant to Government Code Section 65995.7 (d), to provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

V1) Pursuant to Government Code Section 65998, subdivision (a), to reserve or designate real property for a schoolsite.

V2) Pursuant to Government Code Section 65998, subdivision (b), to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

W1) Pursuant to Government Code Section 66001, subdivision (a)(1), to identify the purpose of the fee.

W2) Pursuant to Government Code Section 66001, subdivision (a)(2), to identify the use to which the fee is to be put. If the use is financing public

facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

W3) Pursuant to Government Code Section 66001, subdivision (a)(3), to determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

W4) Pursuant to Government Code Section 66001, subdivision (a)(4), to determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

W5) Pursuant to Government Code Section 66001, subdivision (b), to determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

W6) Pursuant to Government Code Section 66001, subdivision (c), to deposit, invest, account for, and expend the fees pursuant to Section 66006.

W7) Pursuant to Government Code Section 66001, subdivision (d), to identify the purpose to which the fee is to be put for any fund remaining unexpended. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged for any fund remaining

unexpended. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements for any fund remaining unexpended. Designate the approximate dates on which any fund remaining unexpended is expected to be deposited into the appropriate account or fund. Refund any fund remaining unexpended if the findings are not made as required by this subdivision.

W8) Pursuant to Government Code Section 66001, subdivision (e), to identify, within 180 days, when sufficient funds have been collected to complete financing on incomplete public improvements and the public improvements remain incomplete, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner the unexpended portion of the fee, and any interest accrued thereon.

W9) Pursuant to Government Code Section 66001, subdivision (f), if the administrative costs of refunding unexpended revenues exceed the amount to be refunded, the local agency, after a public hearing and notice, may determine that the revenues shall be allocated for some other purpose for which fees are collected and which serves the project on which the fee was originally imposed.

X1) Pursuant to Government Code Section 66002, subdivision (a), to adopt a capital improvement plan, which shall indicate the approximate location,

size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

X2) Pursuant to Government Code Section 66002, subdivision (b), to adopt, and update annually the capital improvement plan shall be, by resolution at a noticed public hearing. Notice of the hearing shall be given as well as maile,d by first-class mail or personal delivery, notice to any city or county which may be significantly affected by the capital improvement plan.

Y) Pursuant to Government Code Section 66005, subdivision (a), to determine the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed to ensure it does not exceed the amount of the fee or exaction.

Z1) Pursuant to Government Code Section 66006, subdivision (a), to deposit a fee, and any interest income earned, with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency. Expend those fees, and any interest income earned, solely for the purpose for which the fee was collected.

Z2) Pursuant to Government Code Section 66006, subdivision (b), to make publicly available, for each separate account or fund shall, within 180 days after the last day of each fiscal year, the following information: (A) a brief description of the type of fee in the account or fund, (B) the amount of the fee, (C) the beginning and ending balance of the account or fund, (D) the

amount of the fees collected and the interest earned, (E) an identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees, (F) an identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, (G) a description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan, and (H) the amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001. Review the information made available to the public at the next regularly scheduled public meeting not less than 15 days after this information has been available to the public. Mail notice of the time and place of the meeting, including the address where this information may be reviewed at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting.

Z3) Pursuant to Government Code Section 66006, subdivision (d), to respond to any person may request an audit of any local agency fee or charge, including fees or charges of school districts.

Z4) Pursuant to Government Code Section 66006, subdivision (f), to identify the public improvement that the fee will be used to finance at the time the local agency imposes the fee.

AA1) Pursuant to Government Code Section 66007, subdivision (a), to not require the payment of fees or charges on a residential development for the construction of public improvements or facilities until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. Determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

AA2) Pursuant to Government Code Section 66007, subdivision (b), to require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a

proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made.

AA3) Pursuant to Government Code Section 66007, subdivision (c), to require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge. E nforce the obligation to pay the fee or charge. Ensure the contract contains a legal description of the property affected, is recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. Record the contract in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. Record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated.

AA4) Pursuant to Government Code Section 66007, subdivision (f), to comply with the requirement that a proposed construction schedule or plan be by the adoption of the capital improvement plan, or the submittal of a five-year plan for construction and rehabilitation of school facilities.

BB) Pursuant to Government Code Section 66008, to expend a fee for public improvements solely and exclusively for the purpose or purposes for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

CC1) Pursuant to Government Code Section 66016, subdivision (a), to hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge. Mail notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section, at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues at least 10 days prior to the meeting. Use any revenue from the fees or service charges in excess of actual cost to reduce the fee or service charge creating the excess.

CC2) Pursuant to Government Code Section 66016, subdivision (b), to take only by ordinance or resolution any action by a local agency to levy a new

fee or service charge or to approve an increase in an existing fee or service charge.

CC3) Pursuant to Government Code Section 66016, subdivision (c), to recover any costs incurred by a local agency in conducting the meeting or meetings from fees charged for the services which were the subject of the meeting.

DD) Pursuant to Government Code Section 66017, subdivision (b), to adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

EE1) Pursuant to Government Code Section 66018, subdivision (a), to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published.

EE2) Pursuant to Government Code Section 66018, subdivision (b), to recover any costs incurred by a local agency in conducting the hearing as part of the fees which were the subject of the hearing.

FF1) Pursuant to Government Code Section 66020, subdivision (a), to accept any required payment in full or satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition from any party that protests the imposition of any fees, dedications, reservations, or other exactions imposed on a development project. Accept written notice from any party that protests the imposition of any fees, dedications, reservations, or other exactions imposed on a development project. Written notice must include: (A) a statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest, and (B) a statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

FF2) Pursuant to Government Code Section 66020, subdivision (b), to not withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project where the party has complied with subdivision (a). Ensure compliance with all

applicable provisions of law in determining whether or not to approve or disapprove a development project.

FF3) Pursuant to Government Code Section 66020, subdivision (c), to make proper and valid findings that the construction of certain public improvements or facilities is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of 180 days without the filing of an action, or resolution of any action filed.

FF4) Pursuant to Government Code Section 66020, subdivision (d), to provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

FF5) Pursuant to Government Code Section 66020, subdivision (e), to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed if the court finds in favor of the plaintiff.

FF6) Pursuant to Government Code Section 66020, subdivision (f), to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed if the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction. Refund the portion of the payment or exaction to any other person who, under protest of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction, if an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect.

GG1) Pursuant to Government Code Section 66023, subdivision (a), to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable when requested by any person in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency.

GG2) Pursuant to Government Code Section 66023, subdivision (b), to recover any costs incurred from the person who requests the audit.

HH1) Pursuant to Government Code Section 66024, subdivision (a), to produce evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed in any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee in which there is at issue whether the development fee is a special tax within the meaning of Section 50076.

HH2) Pursuant to Government Code Section 66024, subdivision (b), to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed, if requested at least 30 days prior to initiating the action or proceeding. Charge a fee for copying the documents requested.

HH3) Pursuant to Government Code Section 66024, subdivision (c), to determine costs in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

II1) Pursuant to Government Code Section 66031, subdivision (a), to be subject to a mediation proceeding.

II2) Pursuant to Government Code Section 66031, subdivision (b), to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

II3) Pursuant to Government Code Section 66031, subdivision (c), to consider, in selecting a person to serve as a mediator, (1) the council of governments having jurisdiction in the county where the dispute arose, (2) any subregional or countywide council of governments in the county where the dispute arose, (3) the Office of Permit Assistance within the Trade and Commerce Agency, or (4) any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

II4) Pursuant to Government Code Section 66031, subdivision (d), to notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

JJ) Pursuant to Government Code Section 66032, to arrive at a settlement and implement it in accordance with the provisions of current law or agree by written stipulation to extend the mediation for another 90-day period.

KK) Pursuant to Government Code Section 66034, to attend a settlement conference before a judge of the superior court if the mediation does not resolve the action. Attend a hearing if the action is later heard on its merits.

LL) Pursuant to Government Code Section 66036, to consult with the Office of Permit Assistance within the Trade and Commerce Agency and the Judicial Council regarding their report to the Legislature regarding the implementation of this chapter and may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

Section 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[112] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school districts may have previously performed functions similar to those mandated by the referenced code Sections, such efforts did not establish a preexisting duty that would

[112] Government Code Section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

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

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

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

relieve the state of its constitutional requirement to later reimburse school districts when these activities became mandated.[113]

Section 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of William McGuire
Associate Superintendent
Clovis Unified School District

Exhibit 2: Copies of Statutes Cited

Chapter 1016, Statutes of 2002
Chapter 33, Statutes of 2002
Chapter 135, Statutes of 2000
Chapter 858, Statutes of 1999
Chapter 300, Statutes of 1999
Chapter 689, Statutes of 1998
Chapter 407, Statutes of 1998
Chapter 772, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 569, Statutes of 1996
Chapter 549, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 686, Statutes of 1995
Chapter 1228, Statutes of 1994
Chapter 983, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1195, Statutes of 1993
Chapter 589, Statutes of 1993
Chapter 1354, Statutes of 1992
Chapter 605, Statutes of 1992
Chapter 487, Statutes of 1992
Chapter 231, Statutes of 1992

[113] Government Code Section 17565, added by Chapter 879, Statutes of 1986: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Chapter 169, Statutes of 1992
Chapter 536, Statutes of 1991
Chapter 1572, Statutes of 1990
Chapter 633, Statutes of 1990
Chapter 1217, Statutes of 1989
Chapter 1209, Statutes of 1989
Chapter 170, Statutes of 1989
Chapter 926, Statutes of 1988
Chapter 912, Statutes of 1988
Chapter 418, Statutes of 1988
Chapter 160, Statutes of 1988
Chapter 29, Statutes of 1988
Chapter 1346, Statutes of 1987
Chapter 1184, Statutes of 1987
Chapter 1037, Statutes of 1987
Chapter 1002, Statutes of 1987
Chapter 927, Statutes of 1987
Chapter 888, Statutes of 1986
Chapter 887, Statutes of 1986
Chapter 685, Statutes of 1986
Chapter 136, Statutes of 1986
Chapter 1498, Statutes of 1985
Chapter 1062, Statutes of 1984
Chapter 1254, Statutes of 1983
Chapter 921, Statutes of 1983
Chapter 923, Statutes of 1982
Chapter 201, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 282, Statutes of 1979
Chapter 955, Statutes of 1977

Exhibit 3: Copies of Code Sections Cited

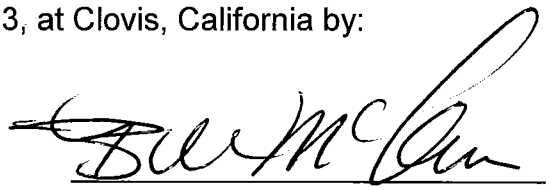
Education Code Sections
17620, 17621, 17622, 17623, 17624, 17625, 17626

Government Code Sections
65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976,65977, 65978, 65979, 65980, 65981, 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, 66001, 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032, 66034, 66037

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Clovis, California by:

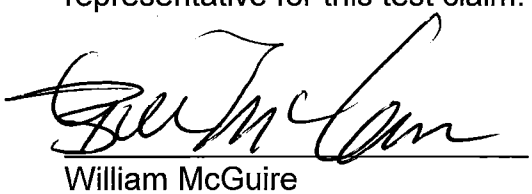


William McGuire
Associate Superintendent

Voice: 559-327-3110
Fax: 559-327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



6/23/2003

William McGuire
Associate Superintendent

Date

Exhibit 1
Declaration of William McGuire

DECLARATION OF William McGuire

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Chapter 1016, Statutes of 2002
Chapter 33, Statutes of 2002
Chapter 135, Statutes of 2000
Chapter 858, Statutes of 1999
Chapter 300, Statutes of 1999
Chapter 689, Statutes of 1998
Chapter 407, Statutes of 1998
Chapter 772, Statutes of 1997
Chapter 799, Statutes of 1996
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Chapter 1254, Statutes of 1983
Chapter 921, Statutes of 1983
Chapter 923, Statutes of 1982
Chapter 201, Statutes of 1981
Chapter 1354, Statutes of 1980
Chapter 282, Statutes of 1979
Chapter 955, Statutes of 1977

Education Code Section 17620
Education Code Section 17621
Education Code Section 17622
Education Code Section 17623

Education Code Section 17624
Education Code Section 17625
Education Code Section 17626

Government Code Section 65970
Government Code Section 65971

Government Code Section 65972
Government Code Section 65973

Government Code Section 65974
Government Code Section 65974.5
Government Code Section 65975
Government Code Section 65976
Government Code Section 65977
Government Code Section 65978
Government Code Section 65979
Government Code Section 65980
Government Code Section 65981
Government Code Section 65995
Government Code Section 65995.1
Government Code Section 65995.2
Government Code Section 65995.5
Government Code Section 65995.6
Government Code Section 65995.7
Government Code Section 65996
Government Code Section 65997
Government Code Section 65998
Government Code Section 66002
Government Code Section 66004
Government Code Section 66005
Government Code Section 66006
Government Code Section 66007
Government Code Section 66008
Government Code Section 66016
Government Code Section 66017
Government Code Section 66018
Government Code Section 66018.5
Government Code Section 66020
Government Code Section 66022
Government Code Section 66023
Government Code Section 66024
Government Code Section 66025
Government Code Section 66030
Government Code Section 66031
Government Code Section 66032
Government Code Section 66034
Government Code Section 66037

1016/02 Developer Fees

I, William McGuire, Associate Superintendent, Clovis Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent, I am responsible for obtaining funding for facility construction for the district. I am familiar with the provisions and requirements of the Statutes, Education Code Sections and Government Code Sections enumerated above, which require Clovis Unified School District to:

A. Pursuant to Education Code Section 17620, to establish policies and procedures to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district. To enter a contractual agreement with the appropriate city or county to collect and administer any fee or other requirement

levied. To expend the fees or other consideration collected for the costs of performing any study, otherwise making findings and determinations, or in preparing the school facilities needs analysis. To retain no more than 3 percent of the fees for the administrative costs incurred in collecting the fees. To issue certification that any fee or other requirement levied has been complied with, or of the district's determination that the fee or other requirement does not apply to the construction. To specify that the fee or other requirement levied is for the construction of public improvements or facilities and delay payment until the date of the final inspection, or the date the certificate of occupancy is issued. To notify a city or county of the adoption of, or increase in, the fee or other requirement.

B. Pursuant to Education Code Section 17621, to enact a resolution adopting or increasing a fee or other requirement. To adopt an urgency measure as an interim authorization for a fee or other requirement, or increase in a fee or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. To transmit a copy of the resolution to each city and each county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area. To comply with procedures in response to a protest of the establishment or imposition of a fee or other requirement by any party on whom a fee or other requirement has been directly imposed. To make the findings on either an individual project basis or on the

basis of categories of commercial or industrial development. To conduct a study to determine the impact of the increased number of employees upon the cost of providing school facilities. To provide a process that permits the party against whom the fee or other requirement is to be imposed the opportunity for a hearing to appeal that imposition.

C. Pursuant to Education Code Section 17622, to restrict any fee or other requirement to be levied upon any greenhouse or agricultural purposes structure, unless and until the district first makes a finding, supported by substantial evidence, that the amount of the proposed fees or other requirements bear a reasonable relationship and are limited to the needs of the community and the cost of providing school facilities. To consider the relationship between the proposed increase in the number of employees the size and specific use of the structure, and the cost of the construction. To consult with the county agricultural commissioner or the county director of the cooperative extension service.

D. Pursuant to Education Code Section 17624, to repay the fee or other requirement to the person from whom that fee or other requirement was collected for a project that failed to commence construction, less the amount of the administrative costs incurred in collecting and repaying the fee or other requirement.

E. Pursuant to Education Code Section 17625, to apply a fee or other form of

requirement to the first installation or occupancy of any manufactured home within the school district. To require compliance with any fee or other form of requirement prior to the close of escrow, or the approval of the manufactured home for occupancy. To apply the amount previously paid by any manufactured home toward the payment of any fee or other requirement to a permanent residential structure on the same lot. To immediately repay the fee or other form of requirement to the person who made the payment to the extent the fee or other form of requirement collected would not have been. To permit a fee or other requirement be waived or paid in installments whenever a manufactured home owned by a lower income person 55 years of age or older, and which has been moved from a space located in one school district, where the owner has resided, to a space in another school district. The fee is to be secured as a lien perfected against the manufactured home. Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien.

F. Pursuant to Education Code Section 17626, to restrict the levy of a fee or other requirement applied to any structure that is damaged as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged.

G. Pursuant to Government Code Section 65971, to notify the city council or board of supervisors if conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational

programs, the reason for those conditions, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist. To specify the mitigation measures considered by the school district. To complete to application to the Office of Public School Construction for preliminary determination of eligibility. To make these findings available to the public.

H. Pursuant to Government Code Section 65972, to assist the city council or board of supervisors, where conditions of overcrowding exist, in determining if there are specific overriding fiscal, economic, social, or environmental factors which would benefit the city or county, thereby justifying the approval of a residential development.

I. Pursuant to Government Code Section 65973, to determine if "conditions of overcrowding" exist. To evaluate "reasonable methods for mitigating conditions of overcrowding."

J. Pursuant to Government Code Section 65974, to assist a city, county, or city and county by providing information regarding all of the following: (1) the general plan provides for the location of public schools, (2) an ordinance has been in effect for a period of 30 days, (3) the land or fees shall be used only for the purpose of providing interim school classroom and related facilities, (4) the location and amount of land to be dedicated or the amount of fees to be paid bear a reasonable relationship and are limited to the needs of the community for interim

school facilities caused by the development, and (5) a finding is made by the city council or board of supervisors that the facilities to be constructed is consistent with the general plan. To consider the methods for mitigating the conditions of overcrowding. To collect the payment of fees at the time the building permit is issued or at a later time as may be specified in the ordinance. To determine developer fees under the school facilities master plan. To have on file with the Office of Public School Construction an application for preliminary determination of eligibility for project funding. To actively pursue permanent financing mechanisms to reduce or eliminate developer fees.

K. Pursuant to Government Code Section 65974.5, to expend those funds after the governing board has first held a public hearing on the subject of the proposed expenditure.

L. Pursuant to Government Code Section 65976, to submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees to solve the conditions of overcrowding.

M. Pursuant to Government Code Section 65978, to maintain a separate account for any fees paid. To file a report with the city council or board of supervisors on the balance in the account; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. To specify which attendance areas will continue to be overcrowded and where conditions of overcrowding will no longer exist. To request a 30-day extension for the filing of

the report in the case of extenuating circumstances, as determined by the board of supervisors or city council. To waive any performance of the payment of fees or the dedication of land during the time that the report has not been filed.

N. Pursuant to Government Code Section 65979, to assist the city or county in determining that, during the period of construction or after construction has been completed and that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district. To return any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding.

O. Pursuant to Government Code Section 65981, to submit a recommendation that fees for providing interim facilities are to be assessed on a development as a condition of city or county approval of a project.

P. Pursuant to Government Code Section 65995, to calculate the amount of a fee or other requirement for the construction or reconstruction of school facilities.

Q. Pursuant to Government Code Section 65995.5, to impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to Section 65995. To make a timely application to the State Allocation Board for new construction funding. To conduct and adopt a school facility needs analysis. To expend these fees solely on the school facilities identified in the needs analysis as being

attributable to projected enrollment growth from the construction of new residential units.

R. Pursuant to Government Code Section 65995.6, to conduct a school facilities needs analysis to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units. To recalculate the existing school building capacity as part of any revision of the needs analysis. To identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities. To identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities. To identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment. To adopt the school facility needs analysis by resolution at a public hearing, after it is in its final form and has been made available to the public. To respond to written comments it receives from the public regarding the school facilities needs analysis. To publish a notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis. To charge a fee reasonably related to the cost of providing these materials to those persons who

request the school facilities needs analysis or revision. To revise the school facilities needs analysis. To adopt a fee or other requirement by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis.

S. Pursuant to Government Code Section 65995.7, to increase the alternative fee or other requirement if state funds for new school facility construction are not available. To offer a reimbursement election that provides the person with the right to monetary reimbursement of the supplemental amount, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. To offer an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon. To provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

T. Pursuant to Government Code Section 65998, to reserve or designate real property for a schoolsite. To mitigate the impacts of a land use approval involving the planning, use, or development of real property other than on the need for school facilities.

U. Pursuant to Government Code Section 66001, to identify the purpose and use of the fee. To determine a reasonable relationship between the fee's use and the type of development project on which the fee is imposed, the need for the public

facility and the type of development project, and the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. To deposit, invest, account for, and expend the fees. To identify the purpose for any fund remaining unexpended. To demonstrate a reasonable relationship between the fee and the purpose for which it is charged for any fund remaining unexpended. To identify all sources and amounts of funding anticipated to complete financing in incomplete improvements for any fund remaining unexpended. To designate the approximate dates on which any fund remaining unexpended is expected to be deposited into the appropriate account or fund. To refund any fund remaining unexpended if the findings are not made as required by this subdivision. To identify when sufficient funds have been collected to complete financing on incomplete public improvements and the public improvements remain incomplete, an approximate date by which the construction of the public improvement will be commenced, or shall refund, with interest, to the then current record owner the unexpended portion of the fee. If the administrative costs of refunding unexpended revenues exceed the amount to be refunded, the local agency, after a public hearing and notice, determine that the revenues shall be allocated for some other purpose for which fees are collected and which serves the project on which the fee was originally imposed.

V. Pursuant to Government Code Section 66002, to adopt a capital improvement plan to be financed with the fees. To adopt the capital improvement plan by

resolution at a noticed public hearing.

W. Pursuant to Government Code Section 66005, to determine the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

X. Pursuant to Government Code Section 66006, to deposit a fee, and any interest income earned, with the other fees for the improvement in a separate capital facilities account in a manner to avoid any commingling of the fees. To expend those fees, and any interest income earned, solely for the purpose for which the fee was collected. To review the information at the next regularly scheduled public meeting. To respond to any person who may request an audit of fees or charges by school districts.

Y. Pursuant to Government Code Section 66007, to delay the collection of fees or charges on a residential development for the construction of public improvements or facilities until the date of the final inspection or the date the certificate of occupancy is issued. To require the property owner as a condition of issuance of the building permit to execute a contract to pay the fee or charge. To enforce the obligation to pay the fee or charge. To ensure the contract contains a legal description of the property affected, is recorded in the office of the county recorder as a lien for the payment of the fee or charge, enforceable against successors in interest to the property owner at the time of issuance of the building permit. To record the contract in the grantor-grantee index in the

name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. To record a release of the obligation in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated. To adopt the capital improvement plan, or the submittal of a five-year plan for construction and rehabilitation of school facilities.

Z. Pursuant to Government Code Section 66008, to expend fees for public improvements solely and exclusively for the purpose or purposes for which the fee was collected.

AA. Pursuant to Government Code Section 66016, to hold at least one open and public meeting prior to levying a new or increased fee or service charge or an increase in an existing fee or service charge. To mail notice of the time and place of the meeting. To make available to the public, data indicating the cost required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. To use any revenue from the fees or service charges in excess of actual cost to reduce the fee or service. To take only by ordinance or resolution any action to levy a new or increased fee or service charge or to approve an increase in an existing fee or service charge. To recover any costs incurred in conducting the meetings from fees charged for the services which were the subject of the meeting.

BB. Pursuant to Government Code Section 66017, to adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety.

CC. Pursuant to Government Code Section 66018, to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published. To recover any costs incurred by a local agency in conducting the hearing as part of the fees which were the subject of the hearing.

DD. Pursuant to Government Code Section 66020, to accept payment or satisfactory evidence of arrangements to pay the fee from any party that protests the imposition of any fees or other exactions imposed on a development project. To accept written notice from any party that protests the imposition of any fees or other exactions imposed on a development project. To allow approval of any map, plan, permit, zone change, license, or other form of for the development project where the party has complied with the above requirements. To ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project. To make proper and valid findings that the construction of certain public improvements or facilities is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a

condition of approval of the proposed development. To suspend approval in the event a protest is lodged, pending withdrawal of the protest, the expiration of the limitation period without an action, or resolution of any action filed. To provide written notice to the project applicant at the time of the approval of the project or at the time of the imposition of the fees or other exactions, including; a statement of the amount of the fees or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun. To refund the unlawful portion of the payment, with interest, if the court finds in favor of the plaintiff. To refund the unlawful portion of the payment, with interest, if the court grants a judgment to a plaintiff invalidating all or a portion of an ordinance or resolution enacting a fee or other exaction. To refund the portion of the payment or exaction to any other person who, under protest of that same ordinance or resolution as enacted, tendered the payment.

EE. Pursuant to Government Code Section 66023, to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable when requested by any person in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. To recover any costs incurred from the person who requests the audit.

FF. Pursuant to Government Code Section 66024, to produce evidence to establish that the development fee does not exceed the cost of the service or facility for

which it is imposed in any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee in which there is at issue whether the development fee is a special tax. To provide a copy of the documents which establish that the development fee does not exceed the cost of the service or facility for which it is imposed.

GG. Pursuant to Government Code Section 66031, to be subject to a mediation proceeding. To consider resolving their dispute by selecting a mutually acceptable person, organization, or agency to serve as a mediator. To notify the court if they have selected a mutually acceptable mediator.

HH. Pursuant to Government Code Section 66032, to arrive at a settlement and implement it in accordance with the provisions of current law or agree by written stipulation to extend the mediation for another 90-day period.

II. Pursuant to Government Code Section 66034, to attend a settlement conference before a judge of the superior court if the mediation does not resolve the action. To attend a hearing if the action is later heard on its merits.

It is estimated that the Clovis Unified School District incurred at least $1,000 in staffing and other costs in excess of any funding provided for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 23 day of June, 2003, at Clovis, California

William McGuire
Associate Superintendent
Clovis Unified School District

Exhibit 2
Copies of Statutes Cited

CHAPTER 955

An act to add Chapter 4.7 (commencing with Section 65970) to Division 1 of Title 7 of the Government Code, relating to land use.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.7 (commencing with Section 65970) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 4.7. SCHOOL FACILITIES

65970. The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

65971. If the governing body of a school district which operates an elementary or high school makes a finding supported by clear and convincing evidence that: (a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no

feasible method for reducing such conditions exist, the governing body of the school district shall notify the city council or board of supervisors of the city or county within which the school district lies. The notice of findings sent to the city or county shall specify the mitigation measures considered by the school district. If the city council or board of supervisors concurs in such findings the provisions of Section 65972 shall be applicable to actions taken on residential development by such council or board.

65972. Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

65973. As used in this chapter:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

65974. For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined necessary pursuant to Section 65971 and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall

be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, such payment shall be made at the time the building permit is issued.

Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less.

65976. Following the decision by the city or county to require the dedication of land or the payment of fees, or both, the governing body of the school district shall submit a schedule specifying how it will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when such facilities will be available. In the event the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

65977. Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by August 1 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

Taxation Code because there are no new duties, obligations or responsibilities imposed on local government by this act.

CHAPTER 282

An act to amend Section 19632 of the Business and Professions Code, to amend Sections 16250, 39246, 39247, 39363, 41300, 41301, 41403, 41604, 42103.5, 52171, 60200, 60265, 84370, 84897, 84904, and 85003.5 of, to add Sections 16096.5, 39618, 39619, 39620, 39621, 41601.5,

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54790.3. (a) If the proposal includes the incorporation of a city, as defined in Section 35037, or the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall, pursuant to the provisions of subdivision (b), determine the amount of property tax revenue to be exchanged by the affected local agency.

(b) In making its determination as required by subdivision (a), the commission shall:

(1) Request the county auditor to determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 2237 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by such agency in the prior fiscal year;

(2) Determine, based on information submitted by each affected local agency, an amount equal to the total cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal;

(3) Multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal.

(4) Following the approval of a proposal subject to this section, the executive officer shall notify the auditor of the amount determined in paragraph (3).

SEC. 53. Section 65974 of the Government Code is amended to read:

65974. For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably

related and limited to the need for schools caused by the development; provided, the fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the fees, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by such builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from such place.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, such payment shall be made at the time the building permit is issued.

Only the payment of fees may be required in subdivisions containing 50 parcels or less.

SEC. 54. Section 65979 is added to the Government Code, to read:

65979. After a school district has received an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code), the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential developments, to levy any fee or to require the dedication of any land within the attendance area of the district.

SEC. 55. Section 65980 is added to the Government Code, to read:

65980. Interim facilities for purposes of Section 65974 shall be limited to temporary classrooms, including their utilities, furnishings, and toilet facilities not constructed with permanent foundations.

SEC. 56. Section 65981 is added to the Government Code, to read:

65981. If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

SEC. 57. Section 66434.1 is added to the Government Code, to read:

66434.1. In the event that an owner's development lien has been created pursuant to the provisions of Article 2.5 (commencing with

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Any other deadlines required for the development of the budget may be delayed 30 days.

SEC. 103. Sections 8, 18, 19, 20, 21, and 28.5 of this act shall be operative on July 1, 1980.

SEC. 104. If any section, part, clause or phrase of this act is for any reason held to be invalid or unconstitutional, the remainder of the act shall not be affected but will remain in full force and effect.

SEC. 105. (a) No appropriation is made by this act, nor is any obligation created thereby under Section 2231 or 2234 of the Revenue and Taxation Code, for the reimbursement of any local agency or school district for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

(b) Notwithstanding Section 905.2 of the Government Code, Section 2253 of the Revenue and Taxation Code, or any other provision of law, no local agency or school district shall have standing to make a claim to the State Board of Control for any costs incurred by it under this act pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code or pursuant to Article 3.5 (commencing with Section 2250) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code.

(c) Notwithstanding Section 2246 of the Revenue and Taxation Code, the Department of Finance shall not review this act to determine costs or revenue losses and shall not report on this act nor make recommendations to the Legislature on this act concerning reimbursements to local agencies or school districts.

(d) The Legislature finds and declares that the complete waiver of the provisions of Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code is justified for the following reasons:

(1) This act implements an initiative constitutional amendment approved by the people of the State of California.

(2) This act is part of an overall legislative program implementing Article XIII A of the California Constitution, which includes billions of dollars of local assistance to local agencies.

(3) There are administrative savings as well as costs mandated by the provisions of this act.

SEC. 106. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The adoption of Article XIII A of the California Constitution has reduced the amount of property tax revenues available to local government and schools to meet operating and certain debt expenses, and may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately.

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CHAPTER 1354

An act to amend Sections 2553, 16301, 17762, 33403, 33502, 33508, 33509, 33510, 33511, 33513, 33514, 33522, 37062, 39146, 39384, 39510, 39619, 41301, 41601, 41604, 41841.5, 41972, 41976, 42123, 42237, 42237.6, 42238, 42240, 42243.5, 42243.7, 46613, 46616, 49531, 49553, 52302.9, 52321, 52324, 52324.5, 81136, 84704, 84720, and 84721 of, to add Sections 2552.5, 12515.5, 17717.5, 17724.5, 17730.2, 41060, 41760.2, 41976.5, 42237.7, 42243.8, 44988, 52213.5, and 54060 to, and to repeal Sections 1705, 2505, 12516, 14070, 14071, 14072, 16302, 16303, 33515, 33517, 33520, 33521, 37062.5, 37063, 37064, 37065.4, 37065.5, 37066, 37067, 37068, 37070, 37071, 37072, 37080, 37081, 37082, 37083, 42210, 42211, 42212, 42213, 42237.6, 46146, 46601, 46605, 46606, 46608, 46610, 46614, 46617, 52317, and 58608 of, the Education Code, to amend Sections 65979 and 65980 of the Government Code, and to amend Section 96 of Chapter 282 of the Statutes of 1979, relating to state and local government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

I am deleting the appropriations and related language contained in Section 37.74 of Assembly Bill No. 2196 for the education of adults in correctional facilities. Since the 1980 Budget Act contains $1,080,000 for these costs, this bill would have provided double funding for this program in 1980–81.

I am also eliminating the $1,000,000 appropriation contained in Section 67.5 of AB 2196 for the mandated local costs associated with Assembly Bill No. 3369. This appropriation would duplicate the appropriation contained in AB 3369 for the same purpose.

With these reductions, I approve Assembly Bill No. 2196.

EDMUND G. BROWN JR., Governor

The people of the State of California do enact as follows:

SECTION 1. Section 1705 of the Education Code is repealed.

SEC. 2. Section 2505 of the Education Code is repealed.

SEC. 2.3. Section 2552.5 is added to the Education Code, to read:

2552.5. For purposes of Section 2504 and subdivision (b) of Section 2552, the second condition imposed upon the use of the proceeds for the construction of administration facilities or centers specified in Section 2504 shall not apply for the entire 1979–80 fiscal year and fiscal years thereafter to a county superintendent of schools in a county in which the county board of education became fiscally independent on July 1, 1966.

SEC. 2.5. Section 2553 of the Education Code is amended to read:

2553. For major capital outlay projects or major repair or replacement projects, which cannot be funded by other revenue sources, county superintendents of schools shall be eligible for such funds in the same manner as specified by law for school districts. Any funds apportioned to the county superintendent pursuant to this section shall be restricted to the purposes of this section.

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cent of the state general apportionment provided for in this section shall be made prior to February 1, 1981.

(f) On or before February 15, 1981, the chancellor shall publish, and shall provide to the Legislature, a report on revenues per unit of average daily attendance in the community colleges. The report shall include comparisons on a district-by-district basis, as well as on a statewide basis, of revenues per unit of average daily attendance for fiscal years 1979–80 and 1980–81. The report shall also include information on the amounts of actual and estimated sources of revenue that comprise the basis for the calculation of revenues per unit of average daily attendance.

(g) For purposes of this article "average daily attendance" and "attendance ADA" shall mean the attendance of state residents attending within the district.

(h) If the revenues appropriated by Section 84728 are insufficient to provide for the state general apportionment as calculated pursuant to this section, the amounts appropriated by Section 84728 shall be allocated on a pro rata basis, so that all community college districts receive the same percentage of their state general apportionment that they are otherwise entitled to receive.

SEC. 62.45. Section 84721 of the Education Code is amended to read:

84721. The base 1980–81 fiscal year revenues for each community college district shall be either the sum of those revenues received pursuant to Sections 84701 to 84704, inclusive, plus the 1979–80 income received from motor vehicle license fees pursuant to Section 11003.4 of the Revenue and Taxation Code, or revenues received pursuant to Section 84706, whichever is applicable, minus those revenues received in the 1979–80 fiscal year for apprenticeship average daily attendance in classes of supplemental and related instruction pursuant to Section 3074 of the Labor Code.

SEC. 62.5. Section 65979 of the Government Code is amended to read:

65979. One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement such district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the district. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if there is the further finding that (1) during the period of construction additional overcrowding would occur from continued residential development, and (2) that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 62.6. Section 65980 of the Government Code is amended to read:

65980. For the purposes of Section 65974, "classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" as defined in this section and shall include no other facilities.

Interim facilities for the purposes of Section 65974 shall be limited to the following:

(a) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(b) Temporary classroom toilet facilities not constructed with permanent foundations.

(c) Reasonable site preparation and installation of temporary classrooms.

SEC. 62.65. Section 96 of Chapter 282 of the Statutes of 1979 is amended to read:

Sec. 96. There is hereby appropriated from the General Fund to Section A of the State School Fund the sum of fourteen million six hundred thousand dollars ($14,600,000) for the 1979–80 fiscal year and the sum of seventeen million five hundred eighteen thousand dollars ($17,518,000) for the 1980–81 fiscal year for purposes of Section 42240 of the Education Code.

SEC. 62.7. Notwithstanding the provisions of Section 81523 of the Education Code, the Saddleback Community College District may use temporary-use buildings for a total time in excess of three years until such facilities are replaced by approved relocatable structures, but in no event shall such total time period extend beyond August 16, 1981.

SEC. 63. Any amount paid by a school district to a county superintendent of schools in the 1978–79 fiscal year pursuant to former Section 1705, as added by Chapter 1010 of the Statutes of 1976, shall be reduced from that school district's 1980–81 revenue limit.

This section shall be deemed operative for the entire 1980–81 fiscal year as though it had been enacted into law and become operative on July 1, 1980. The Superintendent of Public Instruction shall, for such purposes, have authority to take all necessary steps to effect the midfiscal year transition involved, including the authority to adjust allowance computations, apportionments, and disbursements ordered from Section A of the State School Fund.

SEC. 64. The sum of fifteen million dollars ($15,000,000) is hereby appropriated from the Capital Outlay Fund for Public Higher Education or, if Assembly Bill No. 2973 or Senate Bill No. 1426 is chaptered and becomes effective before this act, the Special Account for

struction of administration facilities in Placer County, the county affected by Section 2.3 of this act, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution.

SEC. 70.6. (a) If the Superintendent of Public Instruction determines that there are not sufficient funds available from the amount appropriated pursuant to category (b) of Item 352 of the Budget Act of 1980 to support regional occupational centers and programs operated by county superintendents of schools, then the Superintendent of Public Instruction shall transfer funds appropriated pursuant to category (a) of Item 352 to category (b) to reduce or eliminate the insufficiency.

(b) In the event of application of Section 41972 of the Education Code to apportionments from category (a) of Item 352, transfers authorized by this section shall be similarly adjusted.

SEC. 70.7. Section 8.9 of this act shall become operative only if Assembly Bill No. 2973 of the 1979–80 Regular Session of the Legislature is chaptered.

SEC. 71. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 72. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order for the provisions of this act to apply for the entire 1980–81 fiscal year and to provide school districts sufficient time to plan and adopt new budgets as early as possible for the 1980–81 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 201

An act to amend Section 65978 of the Government Code, relating to school facilities.

[Approved by Governor July 14, 1981. Filed with Secretary of State July 14, 1981.]

The people of the State of California do enact as follows:

SECTION 1. Section 65978 of the Government Code is amended to read:

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year and the facilities leased, purchased, or constructed during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. Such report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

CHAPTER 923

An act to amend Section 39362 of the Education Code, and to amend Sections 65504, 65974, and 66463.5 of the Government Code, relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 1982. Filed with Secretary of State September 13, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 39362 of the Education Code is amended to read:

39362. The sale may be made for cash, or for part cash and upon such terms of deferred payments as are determined by the action of the governing board and which are secured by purchase money, mortgage, deed of trust, an irrevocable letter of credit issued by a state of federally chartered financial institution, or any other form of security which is acceptable to the governing board.

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The provisions of this section may be applied to sales made before the effective date of the amendments to this section made by the Statutes of 1982, with the consent of the parties to the sale.

SEC. 2. Section 65504 of the Government Code is amended to read:

65504. The legislative body may approve, disapprove, or modify the recommendation of the planning commission on any proposed specific plan, regulation, or amendment thereto. Any modification proposed by the legislative body which was not previously considered by the planning commission during its hearing shall first be referred to the planning commission for its report and recommendation to the legislative body. It shall not be necessary for the planning commission to hold a public hearing on the proposed modification. Failure of the planning commission to report within 40 days after the reference, or such longer period as may be designated by the legislative body, shall be deemed to be approval of the proposed change or addition.

SEC. 3. Section 65974 of the Government Code is amended to read:

65974. For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:

(a) The general plan provides for the location of public schools.

(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.

(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development; provided, the fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the fees, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be

dedicated, or both, is consistent with the general plan.

The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

Only the payment of fees may be required in subdivisions containing 50 parcels or less.

SEC. 4. Section 66463.5 of the Government Code is amended to read:

66463.5. (a) When a tentative map is required, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after such additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

(b) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no parcel map of all or any portion of the real property included within such tentative map shall be filed without first processing a new tentative map.

(c) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which such map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve such tentative maps for a period or periods not exceeding a total of three years. If the advisory agency denies a subdivider's application for extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that local governmental agencies can exercise the additional authority granted them by the provisions of this act at the earliest possible date, it is necessary that this act take effect immediately.

CHAPTER 921

An act to add Section 53077 to the Government Code, relating to local agencies.

[Approved by Governor September 19, 1983. Filed with Secretary of State September 20, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077 is added to the Government Code, to read:

53077. If a local agency requires the payment of a fee in order to provide for an improvement to be constructed to serve a residential development as a condition to approving that development, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned on the fund shall also be deposited in that fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

For purposes of this section, "local agency" means a county, city, city and county, school district, special district, or any other municipal public corporation or district.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

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CHAPTER 1254

An act to amend Sections 8277.7, 17722, 17761, and 54444.3 of, and to repeal Section 17763 of, the Education Code, and to add Section 65975 to the Government Code, relating to facilities.

[Approved by Governor September 29, 1983. Filed with Secretary of State September 30, 1983.]

(b) The State Allocation Board may grant a waiver of either or both of the requirements prescribed by subdivision (a) in a case of hardship, as defined by the State Allocation Board. This subdivision shall only apply to buildings used solely for housing special education pupils.

SEC. 4. Section 17763 of the Education Code is repealed.

SEC. 5. Section 65975 is added to the Government Code, to read:

65975. (a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed. C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

SEC. 6. Section 54444.3 of the Education Code is amended to read:

54444.3. (a) Each operating agency receiving Title I Migrant Education funding shall conduct summer school programs for eligible migrant children in kindergarten and grades 1 to 12, inclusive. The summer school programs shall respond to the individual needs of participating pupils and shall build on and be consistent with the instructional programs offered to these pupils during the regular school year. Each summer school program shall be funded, to the extent that funds are available, by federal funds earmarked for migrant education programs, and shall meet the following criteria:

(1) That summer school programs meet the following time requirements:

(A) For kindergarten classes, not less than 180 minutes per day, based upon the full apportionment day of 240 minutes, including recesses, for not less than 20 teaching days.

(B) For grades 1 to 8, not less than 200 minutes per day, based upon the full apportionment day of 240 minutes, including recesses and passing time but excluding noon intermissions, for not less than

four times the costs to the prospective user for alternative facilities for the entire period for which the facilities were requested, whichever is greater.

CHAPTER 1062

An act to amend Section 65978 of the Government Code, relating to school districts.

[Approved by Governor September 12, 1984. Filed with Secretary of State September 12, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 65978 of the Government Code is amended to read:

65978. Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year, the facilities leased, purchased, or constructed, and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall

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cease levying any fee or requiring the dedication of any land pursuant to this chapter.

CHAPTER 1498

An act to amend Sections 65971, 65973, 65974, 65976, 65979, and 65980 of the Government Code, relating to interim school facilities.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors. The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of

receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

SEC. 1.5. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Local Assistance for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

SEC. 2. Section 65973 of the Government Code is amended to

read:

65973. As used in this chapter, the following terms mean:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school, as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

SEC. 2.5. Section 65973 of the Government Code is amended to read:

65973. As used in this chapter the following terms means:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

SEC. 3. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

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(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

SEC. 4. Section 65976 of the Government Code is amended to read:

65976. Before the city council or board of supervisors makes a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

SEC. 4.5. Section 65976 of the Government Code is amended to

read:

65976. As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

SEC. 5. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 5.5. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was

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received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

SEC. 6. Section 65980 of the Government Code is amended to read:

65980. For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

SEC. 7. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 8. Section 1.5 of this bill incorporates amendments to Section 65971 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65971 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 1 of this bill shall not become operative.

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SEC. 9. Section 2.5 of this bill incorporates amendments to Section 65973 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65973 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 2 of this bill shall not become operative.

SEC. 10. Section 4.5 of this bill incorporates amendments to Section 65976 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65976 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 4 of this bill shall not become operative.

SEC. 11. Section 5.5 of this bill incorporates amendments to Section 65979 of the Government Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 65979 of the Government Code, and (3) this bill is enacted after AB 2089, in which case Section 5 of this bill shall not become operative.

CHAPTER 136

An act to amend Section 65979 of the Government Code, relating to school facilities.

[Approved by Governor June 5, 1986. Filed with Secretary of State June 6, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 65979 of the Government Code is amended to read:

65979. (a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

CHAPTER 685

An act to add and repeal Section 53077.5 of the Government Code, relating to local agencies.

[Approved by Governor September 9, 1986. Filed with Secretary of State September 9, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077.5 is added to the Government Code, to read:

53077.5. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs last, provided that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs last; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs last; or on a lump-sum basis when the last dwelling in the

development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

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CHAPTER 887

An act to amend Sections Sections 17739.2, 17788, and 33051 of, and to add Sections 17705.5 and 39015.5 to, the Education Code, to amend Section 65974, and to add Sections 53080 and 53081 and Chapter 4.9 (commencing with Section 65995) to Division 1 of Title 7 of, the Government Code, and to amend Section 6217 of the Public Resources Code, relating to school facilities, and making an appropriation therefor.

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addressed.

(2) The waiver affects a program that requires the existence of a school site council and the school site council did not approve the request.

(3) The appropriate councils or advisory committees, including bilingual advisory committees, did not have an adequate opportunity to review the request and the request did not include a written summary of any objections to the request by the councils or advisory committees.

(4) Pupil or school personnel protections are jeopardized.

(5) Guarantees of parental involvement are jeopardized.

(6) The request would substantially increase state costs.

(7) The exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, was not a participant in the development of the waiver.

(b) The State Board of Education shall not approve any request for waiver of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 unless the school district seeking the waiver demonstrates all of the following:

(1) The school district provided the written notice required under subdivision (f) of Section 33050.

(2) The school district, after making a good-faith effort to that purpose, was unable to reach agreement with any public agency identified under Section 39394 that seeks to acquire the site under that article on terms and conditions that are consistent with the requirements of the purchase plan adopted by the agency under Section 39397.5 and would enable the district to meet its reasonable financial goals.

(3) The detriment to the school district's ability to financially meet the educational needs of the community resulting from the disposition of the school site pursuant to the sale price or lease rate limitations set forth in Section 39396, as compared to the fair market value of the site, outweighs the need for the use of the site for outdoor recreational and open-space purposes as established by a finding made under Section 39397.

(4) In the event that the school district enters into a long-term lease during the period of the waiver or any extension thereof, the school district shall be exempt from the requirements of Article 5 (commencing with Section 39390) of Chapter 3 of Part 33, for the duration of the lease term for that site.

(c) A waiver shall be approved or renewed by the State Board of Education prior to its implementation for the period of time requested by the governing board of a district, but not to exceed two years, except that a waiver approved pursuant to subdivision (b) may be for up to three years.

SEC. 6. Section 39015.5 is added to the Education Code, to read:

39015.5. The amount of any nonuse payments required of any school district under Section 39015 shall be reduced, without regard

to fiscal year, by the amount of the proceeds, resulting from the lease of district property that is subject to that section, that are expended by the district for the purposes of subdivision (a) or (b) of Section 17705.5, or for the payment of bond debt service costs that are directly related to the actual construction of school facilities.

SEC. 7. The Legislature finds and declares as follows:

(a) Many areas of this state are experiencing substantial development and population growth, resulting in serious overcrowding in school facilities.

(b) Continued economic development requires the availability of the school facilities needed to educate the state's young citizens.

(c) In growing areas of this state, the lack of availability of the public revenues needed to construct school facilities is a serious problem, undermining both the education of the state's children and the continued economic prosperity of California.

(d) For these reasons, a comprehensive school facilities finance program based upon a partnership of state and local governments and the private sector is required to ensure the availability of school facilities to serve the population growth generated by new development.

(e) The Legislature therefore finds that the levying of appropriate fees by school district governing boards at the rates authorized by this act is a reasonable method of financing the expansion and construction of school facilities resulting from new economic development within the district.

SEC. 8. Section 53080 is added to the Government Code, to read:

53080. (a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, for new construction within the boundaries of the district, for the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.

SEC. 9. Section 53081 is added to the Government Code, to read:

53081. A school district that imposes any fees on construction within the school district may use those fees to pay any bonds, notes, loans, leases or other installment agreements including, but not limited to, bonds issued by the authority or loans, leases or other

installment agreements that secure bonds issued by the authority. The authority may issue bonds, in accordance with Section 17883, to finance projects for one or more participating school districts that have imposed fees on construction within the district, which bonds may be payable from and secured by those fees in whole or in part. For this purpose, participating school districts may pledge and assign all or any part of those fees to the authority, and the fees so pledged and assigned to the authority, and any income thereon, may be pledged and assigned by the authority to the payment of bonds issued by the authority to finance projects for those participating school districts. While it is the intent of the Legislature that the amount of financing provided to a participating school district pursuant to this section shall be reasonably related, in the judgment of the authority, to the amount of fees on construction expected by the authority to be derived from or attributable to that participating school district, nothing in this section or any other provision of law shall be deemed to require a proportionate or other relationship between the amount of the financing actually provided to a participating school district pursuant to this section and the amount of fees on construction actually derived from or attributable to that participating school district pursuant to this section or used by the authority to secure or pay any bonds of the authority issued pursuant to this section.

SEC. 10. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount

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necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a School Facilities Master Plan administered by a Joint Powers Authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. Provided, however, that in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Local Assistance, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a

school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

SEC. 11. Chapter 4.9 (commencing with Section 65995) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 4.9. PAYMENT OF FEES, CHARGES, DEDICATIONS, OR OTHER REQUIREMENTS AGAINST A DEVELOPMENT PROJECT

65995. (a) Except for a dedication or fee, or both, required under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other form of requirement shall be levied by the legislative body of a local agency against a development project, as defined by Section 65928, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fee, charge, dedication, or other form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under Chapter 4.7 (commencing with Section 65970), exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of covered or enclosed space, in the case of any residential development.

(2) Twenty-five cents ($0.25) per square foot of covered or enclosed space, in the case of any commercial or industrial development. No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) Subdivision (a) does not apply during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before the effective date of this chapter that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development. In addition, any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other form of requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of

statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(e) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined by Section 65928 of the Government Code pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(b) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(c) Chapter 4.5 (commencing with Section 15450) of Part 10 of the Education Code.

(d) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(e) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(f) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(g) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(h) Article 3 (commencing with Section 42260) of Chapter 7 of Part 24 of the Education Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

65997. This chapter shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

SEC. 12. Section 6217 of the Public Resources Code, as amended by Chapter 1749 of the Statutes of 1984, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary

or any other provision of law may be spent in accordance with Sections 17785 to 17795, inclusive, of the Education Code (Emergency School Classroom Law of 1979).

(g) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(h) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), (f), and (g).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 13. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of thirty million dollars ($30,000,000) is hereby appropriated to the State Allocation Board from funds in the Federal Trust Fund, created pursuant to Section 16360 of the Government Code, received by the state either from federal oil overcharge funds in the Petroleum Violations Escrow Account, as defined by either Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or by any other federal law, or from federal oil overcharge funds available pursuant to court judgments, for allocation without regard to fiscal year to school districts for the expenses of air-conditioning equipment and insulation materials pursuant to Section 42250.1 of the Education Code.

SEC. 14. (a) Sections 1 to 21, inclusive, of this act shall become operative only if Senate Bill 327 is enacted and becomes effective on January 1, 1987.

(b) As an additional condition, Sections 2 and 19 of this act shall become operative only if the Greene-Hughes School Building Lease Purchase Bond Law of 1986 was ratified by the voters of this state at the general election of November 4, 1986.

SEC. 15. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

CHAPTER 888

An act to amend Sections 17732, 17742, 17742.5, 17749, and 39619.2 of the Education Code, to amend Section 53080 of the Government Code, to amend Section 6217 of the Public Resources Code, and to amend Section 14 of AB 2926 of the 1985–86 Regular Session, relating to school facilities financing, and making an appropriation therefor.

[Approved by Governor September 18, 1986. Filed with Secretary of State September 18, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 17732 of the Education Code is amended to read:

17732. The board shall fix rents for all projects acquired and may change the rents from time to time as may be needed provided the rents shall not in any year exceed the sum of the following:

(a) One dollar ($1).

(b) Any interest earned on funds in the county school lease-purchase fund for the district.

(c) Any unencumbered bond funds of the district.

(d) The net proceeds from the sale or lease of any school buildings or land no longer needed for school purposes, exclusive of proceeds that are used for capital outlay expenditures for school construction that conforms to building area standards established under this chapter, or for the district funding requirement under subdivision (b) of Section 17705.5.

SEC. 2. Section 17742 of the Education Code is amended to read:

17742. (a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction. Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include, in any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(c) The board shall provide that building area for covered

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, where the board finds that special conditions of terrain, climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a). The cost of acquiring those structures shall apply to fulfilling the district's funding requirement under Section 17705.5.

(e) Whenever at least 10 percent of the allowable new building construction contained in an application is to be utilized for relocatable structures, an additional three square feet of building area shall be allowed.

SEC. 5. Section 39619.2 of the Education Code, as added by Section 30 of SB 327 of the 1985–86 Regular Session, is amended to read:

39619.2. (a) School districts may submit applications to the State Allocation Board for deferred maintenance funding in addition to the amounts specified in Section 39619. In order to be eligible for an additional apportionment, a school district shall do all of the following:

(1) Certify that if an additional apportionment is provided, the district will have matched the additional apportionment amount with an equal amount of district funds that have not been previously used as a match for state aid.

(2) Certify an additional claim of not greater than one-half of 1 percent of the total general funds and adult education funds budgeted by the district for the fiscal year, excluding any amounts budgeted for capital outlay or debt service, but including adult education funds.

(3) Certify that any additional funds will be used to meet deferred maintenance identified in the district's five-year deferred maintenance plan.

(b) The State Allocation Board shall establish rules and regulations regarding the formulas used to apportion additional funds pursuant to this section.

(c) It is the intent of the Legislature that state funds for deferred maintenance be drawn first from excess bond repayments by school districts, revenues pursuant to subdivision (f) of Section 6217 of the Public Resources Code, and proceeds from existing general obligation bonds.

SEC. 6. Section 53080 of the Government Code, as added by

Section 8 of AB 2926 of the 1985–86 Regular Session, is amended to read:

53080. (a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, and, as to residential development, to new construction, and other construction to the extent of the resulting increase in habitable area.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.

SEC. 7. Section 6217 of the Public Resources Code, as amended by Chapter 1749 of the Statutes of 1984, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for such purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to the provisions of Section 6875.

(b) To the California Water Fund each fiscal year the amount of

appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 8. Section 14 of AB 2926 of the 1985–86 Regular Session is amended to read:

Sec. 14. (a) Section 1 to 13 inclusive of this act shall become operative only if Senate Bill 327 is enacted and becomes effective on January 1, 1987.

(b) As and additional condition, Sections 2 and 11 of this act shall become operative only if the Greene-Hughes School Building Lease Purchase Bond Law of 1986 was ratified by the voters of this state at the general election of November 4, 1986.

SEC. 9. Sections 6, 7, and 8 of this act shall become operative only if AB 2926 of the 1985-86 Regular Session is enacted and becomes effective January 1, 1987.

SEC. 10. Sections 1, 2, 3, 4, and 5 of this act shall become operative only if SB 327 of the 1985-86 Regular Session is enacted and becomes effective January 1, 1987.

CHAPTER 927

An act to add Chapter 5 (commencing with Section 66000) to Division 1 of Title 7 of the Government Code, relating to development projects.

[Approved by Governor September 21, 1987. Filed with Secretary of State September 22, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 66000) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 5. FEES FOR DEVELOPMENT PROJECTS

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district, provided that "local agency" does not include a school district if Senate Bill No. 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(d) "Public facilities" includes public improvements, public services, and community amenities.

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the

following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Sections 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 53077.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) The local agency shall refund to the then current record owner or owners of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this subdivision. A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this subdivision exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development

project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

66002. (a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

66003. This chapter does not apply to a fee imposed pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution, because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement

available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

CHAPTER 1002

An act to amend Sections 53077, 54997, and 54998 of the Government Code, relating to fees.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077 of the Government Code is amended to read:

53077. (a) If a local agency requires the payment of a fee specified in paragraph (2) of subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected, except that the requirements of this sentence shall not apply to interest on the fees paid pursuant to Section 66477 until January 1, 1985.

(b) For purposes of this section:

(1) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(2) "Fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, as added by Assembly Bill 1600 of the 1987–88 Regular Session, if enacted, and that is imposed by the local agency as a condition of approving the development project.

(3) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. Section 54997 of the Government Code is amended to

read:

54997. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) "Local agency," as used in this chapter, means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 3. Section 54998 of the Government Code is amended to read:

54998. This chapter shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1037

An act to add Section 53080.15 to the Government Code, relating to school facilities.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 53080.15 is added to the Government Code, to read:

53080.15. (a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 53080 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and

the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 53080, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 53080. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

CHAPTER 1184

An act to amend Section 30801 of the Food and Agricultural Code, to amend Sections 1780, 15646, 25355, 38792, 53077.5, and 57384 of the Government Code, to amend Sections 1920 and 6490 of the Health and Safety Code, to add Section 15210 to the Probate Code, to amend Section 5554 of the Public Resources Code, to amend Sections 98.6, 2189, 3708, 3716, 4105.2, 4222, 4336, 4337, 5097, and 5097.2 of, to repeal and add Section 2922 of, and to repeal Section 4105.3 of, the Revenue and Taxation Code, to amend Sections 22507, 22526, 22567, 22572, 22587, 22594, 22605, 22620, 22646, and 22662.5 of the Streets and Highways Code, and to amend Section 21967 of the Vehicle Code, relating to local government.

[Approved by Governor September 25, 1987. Filed with Secretary of State September 26, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(2) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk directly or through judges of justice or municipal courts, to owners of dogs, that make application.

(b) The licenses shall be issued for a period of not to exceed two years.

(c) In addition to the authority provided in subdivisions (a) and (b), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 2. Section 1780 of the Government Code is amended to

subdivision, shall not exceed 50 percent of the license fee otherwise imposed.

SEC. 6. Section 53077.5 of the Government Code is amended to read:

53077.5. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, provided, that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this

section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 7. Section 57384 of the Government Code is amended to read:

57384. (a) Except as provided in subdivision (b), whenever a city has been incorporated from territory formerly unincorporated, the board of supervisors shall continue to furnish, without additional charge, to the area incorporated all services furnished to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation became effective or until the city council requests discontinuance of the services, whichever occurs first.

(b) This subdivision applies only to incorporations for which the petition or resolution of application for incorporation is filed with the commission on or after January 1, 1987. Prior to the commission adopting a resolution making determinations, the board of supervisors may request that the city reimburse the county for the net cost of services provided pursuant to subdivision (a). The commission shall impose this requirement as a term and condition of its resolution. The city shall be obligated to reimburse the county within five years of the effective date of the incorporation or for a period in excess of five years, if the board of supervisors agrees to a longer period. As used in this subdivision, "net cost of services" means the total direct and indirect expense to the county of providing services, as determined pursuant to paragraph (2) of subdivision (c) of Section 56842, adjusted by any subsequent change in the California Consumer Price Index, less any revenues which the county retains that were generated from the formerly unincorporated territory during the period of time the services are furnished pursuant to subdivision (a). This subdivision applies only to those services which are to be assumed by the city.

(c) At the request of the city council, the board of supervisors, by resolution, may determine to furnish, without charge, to the area incorporated all or a portion of services furnished to the area prior to the incorporation for an additional period of time after the end of the fiscal year during which the incorporation became effective. The additional period of time after the end of the fiscal year during which the incorporation became effective for which the board of supervisors determines to provide services, without charge, and the specific services to be provided shall be specifically stated in the resolution adopted by the board of supervisors.

116670

CHAPTER 1346

An act to add Section 53080.4 to the Government Code, and to amend Sections 18035 and 18035.2 of the Health and Safety Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1987. Filed with Secretary of State September 29, 1987.]

The people of the State of California do enact as follows:

SECTION 1. Section 53080.4 is added to the Government Code, to read:

53080.4. (a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 53080 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to

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any other form of resident ownership of the park as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 53080 is required as to any manufactured home or mobilehome, which manufactured home or mobilehome is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 53080 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

SEC. 2. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) For every sale by a dealer of a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to the provisions of subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within three working days of receipt, one of which shall be the day of receipt. For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable

shall not become operative, and Section 18035 of the Health and Safety Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 2109 and AB 2481, at which time Section 2.7 of this bill shall become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid the adverse impact of school facilities fees currently being imposed on manufactured homes and mobilehomes, an affordable source of housing for persons of low and moderate income, it is necessary that this act take effect immediately.

CHAPTER 29

An act to amend Section 17718.5 of the Education Code, and to amend Sections 53080 and 65995 of, to add Section 65995.1 to, and to repeal and add Section 65997 of, the Government Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 14, 1988. Filed with Secretary of State March 14, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 17718.5 of the Education Code is amended to read:

17718.5. (a) The Legislature intends for the board to encourage school districts to utilize alternative methods to fund school facilities.

(b) The board shall approve applications pursuant to the requirements of this section that request the board to share a portion of the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. The board shall disregard the fact that structures have been constructed in accordance with that act, and neither consider nor approve any application for cost sharing until the time that the applicant school district would have become eligible for approval of its application during the normal process established for considering and approving applications.

(c) The board shall approve applications for cost sharing based on both of the following factors:

(1) Estimates of average daily attendance at the time the application is considered.

(2) The amount of cost sharing requested.

(d) The costs shared by the board shall be an amount equal to the cost that would have been allowed for the project had it been originally approved pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each year that the project was constructed in advance of the application approval, but no more than the lesser of an amount equal to 75 percent of the allowable cost of

the project or the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.

(e) If the board utilizes a point system to prioritize applications for funding, the computation of priorities for an application pursuant to this section shall be increased by 4 percent for each year from the date of construction of the project to the date of approval of the cost sharing application.

SEC. 2. Section 53080 of the Government Code, as amended by Chapter 888 of the Statutes of 1986, is amended to read:

53080. (a) The governing board of any school district is authorized to levy a fee, charge, dedication, or other form of requirement against any development project, as defined in Section 65928, within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other form of requirement may be applied only to new commercial and industrial construction, to new residential construction, and, to the extent of the resulting increase in habitable space, as defined in Section 65995, to other residential construction as to any development project having a value in excess of twenty thousand dollars ($20,000).

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other form of requirement levied by the governing board of that school district pursuant to subdivision (a).

(c) In the case of the sale of a manufactured home or mobilehome, the payment of fees to either the school district or other entity shall occur at the time of occupancy pursuant to the sale or lease of the manufactured home or mobilehome pursuant to Section 18080.5 of the Health and Safety Code.

SEC. 3. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a dedication or fee, or both, required under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other form of requirement shall be levied by the legislative body of a local agency against a development project, as defined by Section 65928, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fee, charge, dedication, or other form of requirement, as described in subdivision (a), including the amount of fees to be paid or the value of land to be dedicated, or both, under Chapter 4.7 (commencing with Section 65970), exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of habitable space, in the case of any residential development. "Habitable space,"

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for this purpose, means the space determined by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county, to be within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, detached accessory structure, or similar area.

(2) Twenty-five cents ($0.25) per square foot of covered or enclosed space, in the case of any commercial or industrial development. No fee, charge, dedication, or other form of the requirement may be levied by any school district governing board upon any commercial or industrial development unless and until the governing board has first made the finding that the location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be annually increased according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting.

(c) Subdivision (a) does not apply during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before the effective date of this chapter that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development. In addition, any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other form of requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(e) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

SEC. 4. Section 65995.1 is added to the Government Code, to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project used exclusively for the housing of senior citizens, as described in Section 51.3 of the Civil Code, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject

to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than the housing of senior citizens only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 5. Section 65997 of the Government Code is repealed.

SEC. 6. Section 65997 is added to the Government Code, to read:

65997. (a) This chapter shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

(b) This section shall become operative December 31, 1990.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain changes in existing law that will be affected by the decision of the voters on a state general obligation bond measure to be voted on at the election of June 7, 1988, it is necessary that this act take effect immediately.

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CHAPTER 160

An act to amend Sections 6736.1, 7085.5, 10177, 17577.2, 19022, and 22444 of, to amend and renumber Sections 6032, 19549.9, and 24045.10 of, to amend and renumber the heading of Chapter 8 (commencing with Section 18600) of Division 8 of, and to repeal Section 22454 of, the Business and Professions Code, to amend Sections 1799.99 and 3294 of, and to amend the headings of Division First (commencing with Section 25), Division Second (commencing with Section 654), Division Third (commencing with Section 1427), and Division Fourth (commencing with Section 3274) of, the Civil Code, to amend Sections 1013a, 2017, and 2025 of the Code of Civil Procedure, to amend Section 42923 of, to amend and renumber Sections 51770, 54965, and 67175 of, to amend and renumber the headings of Article 7.3 (commencing with Section 51775) of Chapter 5 of Part 28 of, Article 2.5 (commencing with Section 52130) of Chapter 7 of Part 28 of, and Article 5 (commencing with Section 92650) of Chapter 6 of Part 57 of, to add Article 4 (commencing with Section 39180) to Chapter 2 of Part 23 of, to repeal Article 4 (commencing with Section 39170) of Chapter 2 of Part 23 of, to repeal the heading of Article 2 (commencing with Section 56430) of Chapter 4.4 of Part 30 of, and to repeal Chapter 2 (commencing with Section 99100) of Part 65 of, the Education Code, to amend Sections 3520, 3795, 5025, 5215, 5330, 10228.1, and 14821 of the Elections Code, to amend Section 18357 of the Financial Code, to amend Section 3950 of, to amend and renumber the heading of Article 3 (commencing with Section 7360) of Chapter 2 of Part 2 of Division 6 of, and to add Section 3950 to, the Fish and Game Code, to amend Sections 221, 33519, 77059, and 77194 of, to amend the heading of Chapter 1 (commencing with Section 24501) of Part 1 of Division 12 of, to add Article 40 (commencing with Section 38891) to Chapter 5 of Part 3 of Division 15 of, and to repeal Article 40 (commencing with Section 39991) of Chapter 5 of Part 3 of Division 15 of, the Food and Agricultural Code, to amend Sections 811.6, 3540, 3541.3, 3544.1, 3544.7, 3548.2, 4216, 6103.2, 12805, 15364.74, 16366.9, 17004.6, 20017.98, 26256, 26261, 31726, 65996, 73360, 74131, and 77002 of, to amend and renumber Sections 53080, 54994.2, 61765.12, and 82048.5 of, to amend and renumber the heading of Title 7.8 (commencing with Section 68055) of, to repeal Section 15819.20 of, to repeal Chapter 12 (commencing with Section 76000) of Title 8 of, and to repeal the heading of Chapter 2 (commencing with Section 68055) of Title 7.8 of, the Government Code, to amend Section 654.5 of the Harbors and Navigation Code, to amend Sections 1268.5, 1336.2, 1343, 1437, 1502, 1575.3, 1575.4, 1599.84, 1728.2, 1728.3, 25158, 25534, 26594.3, 44031, and 50748.1 of, to amend and renumber Sections 199.27, 1170, 1171, 1172, 1173, 1367.4, 1596.889, 1596.891, 1597.11, 11811.5, 25122.55, and 40715 of, to amend and renumber the headings of Chapter 3.3 (commencing with Section 1568.10), Chapter 3.3 (commencing with Section 1569), and Chapter 3.2 (commencing with Section 1570) of Division 2 of, and the heading

chapter in another county shall receive a disability retirement allowance which shall be the greater of the following:

(a) The sum to which he or she would be entitled as service retirement.

(b) A sum which shall consist of any of the following:

(1) An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

(2) If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

(3) If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district. This paragraph shall only apply to a person who becomes a member of the system on or after January 1, 1988.

SEC. 67. Section 53080 of the Government Code, as added by Chapter 606 of the Statutes of 1986, is amended and renumbered to read:

53080.5. (a) No city or county may require an applicant for a building or encroachment permit to file a certificate of insurance evidencing coverage for bodily injury or property damage liability as a condition to the issuance of either, or both, of those permits, unless the city or county imposes that requirement by ordinance.

(b) This section does not apply to contracts for public works of improvement entered into by a city or county.

SEC. 68. The second Section 54994.2 of the Government Code, as added by Chapter 696 of the Statutes of 1987, is amended and renumbered to read:

54994.3. As used in this chapter:

(a) "Fees" do not include rates or charges for water, sewer, or electrical service.

(b) "Local agency" has the same meaning as provided in Section 54994.

SEC. 69. Section 61765.12 of the Government Code, as amended and renumbered by Chapter 56 of the Statutes of 1987, is amended and renumbered to read:

61765.20. Notwithstanding Section 61765, in the Descanso Community Water District, the water standby or availability charge shall not exceed forty dollars ($40) per year for each acre of land on which the charge is levied or forty dollars ($40) per year for a parcel less than one acre.

This section, applicable only to the Descanso Community Water District, is necessary because of the unique and special water management and financing problems in the area included within the district.

SEC. 70. Section 65996 of the Government Code is amended to read:

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined by Section 65928 of the Government Code pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(e) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(f) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

SEC. 71. The heading of Title 7.8 (commencing with Section 68055) of the Government Code is amended and renumbered to read:

TITLE 7.9. RECYCLING, RESOURCE RECOVERY, AND LITTER PREVENTION

SEC. 72. The heading of Chapter 2 (commencing with Section 68055) of Title 7.8 of the Government Code is repealed.

SEC. 73. Section 73360 of the Government Code is amended to read:

73360. In a municipal court district having three judges, the following positions are authorized:

(a) One clerk-administrator of the court (Schedule B).

(b) One chief deputy clerk.

(c) Three deputy clerk-division supervisors.

(d) Four deputy clerk-courtroom clerks.

(e) Fifteen deputy clerks III.

(f) Eight deputy clerks-criminal process.

(g) Six deputy clerks-data entry operator II or I, not to exceed a combined total of six positions at any one time.

(h) Twenty-two deputy clerks II or deputy clerks I, not to exceed a combined total of 22 positions at any one time.

(i) One executive secretary.

(j) Four supervising deputy clerks.

(k) One deputy clerk-senior data entry operator.

in that article, chapter, part, title, or division.

CHAPTER 418

An act to amend Sections 66000, 66001, and 66003 of, to amend and renumber Sections 50076.5, 53077, 53077.5, 65913.5, 65958, and 65959 of, and to add Section 66004 to, the Government Code, relating to local agencies.

[Approved by Governor August 12, 1988. Filed with Secretary of State August 15, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 50076.5 of the Government Code is amended and renumbered to read:

66017. (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to

subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

SEC. 2. Section 53077 of the Government Code is amended and renumbered to read:

66006. (a) If a local agency requires the payment of a fee, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(c) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 3. Section 53077.5 of the Government Code is amended and renumbered to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have

received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(d) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(e) The Legislative Analyst shall submit a report to the Legislature by January 1, 1992, which evaluates the implementation of this section. In preparing the report, the Legislative Analyst shall consult with individuals and associations who, in the opinion of the Legislative Analyst, are knowledgeable about the impact of this section. Those individuals and associations shall include, but not be limited to, representatives of builders, landowners, planners, civil engineers, land surveyors, counties, cities, school districts, special districts, and public utilities.

(f) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 3.5. Section 53077.5 of the Government Code is amended and renumbered to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be

paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permitholder as grantor.

(3) The contract may require the building permitholder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit as issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

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(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

SEC. 4. Section 65913.5 of the Government Code is amended and renumbered to read:

66008. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set

aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 5. Section 65958 of the Government Code is amended and renumbered to read:

66009. Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been directly imposed, as a condition of approval of a development, as defined by Section 65927, or development project may protest, as provided in Sections 66008 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66008 and 66475.4, Section 66475.4 shall prevail over Section 66008 to the extent of any conflict between those two sections.

SEC. 5.5. Section 65958 of the Government Code is amended and renumbered to read:

66009. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project may protest, as provided in Sections 66008 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66008 and 66475.4, Section 66475.4 shall prevail over Section 66008 to the extent of any conflict between those two sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act which contains protest procedures or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public

indebtedness.

SEC. 6. Section 65959 of the Government Code is amended and renumbered to read:

66005. (a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

SEC. 7. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, or any other municipal public corporation or district.

(d) "Public facilities" includes public improvements, public services, and community amenities.

SEC. 8. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be

made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) The local agency shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The findings required by this subdivision need only be made for moneys in the possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

(e) Except as provided in subdivision (f), the local agency shall refund to the then current record owner or owners of lots or units of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to subdivision (d). A local agency may refund the unexpended or uncommitted revenues by direct payment, by providing a temporary suspension of fees, or by any other means consistent with the intent of this section. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended or uncommitted revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

SEC. 9. Section 66003 of the Government Code is amended to read:

66003. Sections 66001 and 66002 do not apply to a fee imposed

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pursuant to a reimbursement agreement by and between a city or county and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 10. Section 66004 is added to the Government Code, to read:

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5.

SEC. 11. Section 3.5 of this bill incorporates amendments to Section 53077.5 of the Government Code proposed by both this bill and AB 3143. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends, or amends and renumbers, Section 53077.5 of the Government Code, and (3) this bill is enacted after AB 3143, in which case Section 3 of this bill shall not become operative.

SEC. 12. Section 5.5 of this bill incorporates amendments to Section 65958 of the Government Code proposed by both this bill and SB 1407. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends, or amends and renumbers, Section 65958 of the Government Code, and (3) this bill is enacted after SB 1407, in which case Section 5 of this bill shall not become operative.

CHAPTER 912

An act to amend, and amend and renumber, Section 53077.5 of the Government Code, relating to development fees.

[Approved by Governor September 15, 1988. Filed with Secretary of State September 15, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077.5 of the Government Code is amended to read:

53077.5. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, provided, that utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the

local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permitholder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) "Local agency," as used in this section, means a county, city, or city and county, whether general law or chartered, or district. "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(e) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(f) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 2. Section 53077.5 of the Government Code is amended and renumbered to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If

the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the applicant, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permitholder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or

inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution, because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of the Government Code.

SEC. 4. Section 2 of this bill incorporates amendments to Section 53077.5 of the Government Code proposed by both this bill and AB 3980. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends, or amends and renumbers, Section 53077.5 of the Government Code, and (3) this bill is enacted after AB 3980, in which case Section 1 of this bill shall not become operative.

CHAPTER 926

An act to amend Section 54995 of, and to amend and renumber Section 53077 of, the Government Code, and to amend Section 31053 of the Water Code, relating to local agencies.

[Approved by Governor September 15, 1988. Filed with Secretary of State September 16, 1988.]

The people of the State of California do enact as follows:

SECTION 1. Section 53077 of the Government Code is amended and renumbered to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (b) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of

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the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(c) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(d) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. Section 54995 of the Government Code is amended to read:

54995. Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion levying a new fee or service charge, or modifying or amending an existing fee or service charge, duly enacted by a local agency, as defined in Section 54994, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

SEC. 3. Section 31053 of the Water Code is amended to read:

31053. No publicly owned utility shall commence to provide any service for, on, or to any land within a county water district which is subject to the lien of a general obligation bonded indebtedness or which was the subject of a lease-purchase, revenue, or other type of debt incurred for capital improvements by or on behalf of the district incurred by the district for the purpose of providing a service similar to that which the utility proposes to provide.

However, a publicly owned utility may commence to provide service, otherwise prohibited, upon either of the following conditions:

(a) If the board of directors of the county water district, by resolution permits the service.

(b) In any portion of such a county water district proposed to be served by the publicly owned utility in which the total number of registered voters residing therein exceeds 200, if at least two-thirds

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of the voters voted at a special county water district election to permit the service. The election shall be called and held as an initiative measure pursuant to Section 30830.

SEC. 4. It is the intent of the Legislature that the amendment and renumbering of Section 53077 of the Government Code purposed by Section 1 of this bill shall prevail over the amendment and renumbering of Section 53077 by Section 2 of Assembly Bill No. 3980 of the 1987–88 Regular Session of the Legislature.

CHAPTER 170

An act to amend Sections 54999.1, 66003, and 66006 of the Government Code, relating to developer fees.

[Approved by Governor July 19, 1989. Filed with Secretary of State July 20, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 54999.1 of the Government Code is amended to read:

54999.1. For purposes of this chapter:

(a) "Actual construction costs" includes the cost of all activities necessary or incidental to the construction of a public utility facility, such as financing, planning, designing, acquisition of property or interests in property, construction, reconstruction, and rehabilitation.

(b) "Capital facilities fee" or "capacity charge" means any nondiscriminatory charge to pay the capital cost of a public utility facility.

(c) "Public agency" means the United States or any of its agencies, the state or any of its agencies, the Regents of the University of California, a county, a city, a district, a public authority, or any other political subdivision or public corporation of this state.

(d) "Public utility facility" means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or for sewage collection, treatment, or disposal.

(e) "Public utility service" means service provided from a public utilities facility.

(f) "Nondiscriminatory" means that the capital facilities fee does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, and is not in excess of the proportionate share of the cost of the public utility facilities of benefit to the person or property being charged, based upon the proportionate share of use of those facilities.

(g) "State agency" or "state" means any state office, department, division, bureau, board, or commission.

(h) A capital facilities fee is imposed on the date on which the statement of charges for a public utility service is mailed or otherwise transmitted to the public agency that is receiving or will receive the

public utility's service.

SEC. 2. Section 66003 of the Government Code is amended to read:

66003. Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

SEC. 3. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 60 days of the close of each fiscal year, make available to the public the beginning and ending balance for the fiscal year and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (e) of Section 66001 during the fiscal year. The local agency shall review this information at the next regularly scheduled public meeting not less than 15 days after the availability of the information required by this subdivision.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 54997, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1209

An act to amend Section 11010 of the Business and Professions Code, to amend Sections 17702.1, 17705.5, 17714, 17718.5, 17719.5, 17732, 17742, 17742.7, 17746.7, 17749, 39140, and 39304.5 of, and to add Sections 16080.5 and 17740.2 to, the Education Code, to amend Sections 53080, 65995, 65995.1, 65996, and 66007 of, and to add Sections 15492, 53080.1, 53080.2, 53080.3, 53080.6, 65974.5, 65995.2, and 66413.7 to, the Government Code, and to amend Sections 18035 and 18035.2 of the Health and Safety Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts

school district pursuant to a lease or a permit.

"Relocatable structure" is any structure that is designed to be relocated.

SEC. 18. Section 15492 is added to the Government Code, to read:

15492. (a) The Department of General Services shall assign one full-time position within the Office of Local Assistance to the performance of the following functions:

(1) Providing advisory assistance to school districts regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, and submitting those recommendations to the State Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Local Assistance to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Local Assistance, as that staffing level existed on the operative date of this section.

SEC. 19. Section 53080 of the Government Code is amended to read:

53080. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995, exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total

resulting increase in assessable space.

(2) For purposes of this section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(3) For purposes of this section, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 39618 of the Education Code.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a), or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 53080.1, the governing board specifies that the fee, charge, dedication, or other

requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 53080.1.

SEC. 20. Section 53080.1 is added to the Government Code, to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district

shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are based on commercial and industrial factors within the district, as calculated on either an individual project or categorical basis, in accordance with subparagraph (A). The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The

party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 21. Section 53080.2 is added to the Government Code, to read:

53080.2. (a) In the event the fee authorized pursuant to Section 53080 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(1) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(2) In the event the affected school districts are unable to reach an agreement pursuant to paragraph (1), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(b) For purposes of the calculation of the district matching share under Section 17705.5 of the Education Code, the fee revenue allocated to the applicant district pursuant to subdivision (a) is deemed to be, as to that district, the maximum fee authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970) of Division 2 of Title 7, or both.

SEC. 22. Section 53080.3 is added to the Government Code, to read:

53080.3. (a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 53080 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995.

(c) Where the amount of a local matching share required of any school district pursuant to Section 17705.5 of the Education Code includes the amount of a fee or other consideration imposed against a development project that is entitled to reimbursement under this section, the local matching share shall be reduced by the amount of that fee or other consideration.

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SEC. 23. Section 53080.6 is added to the Government Code, to read:

53080.6. (a) A fee, charge, dedication, or other requirement authorized under Section 53080, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

SEC. 24. Section 65974.5 is added to the Government Code, to read:

65974.5. Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

SEC. 25. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory

structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.

(c) (1) Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development.

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests

does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

SEC. 26. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (j) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 27. Section 65995.2 is added to the Government Code, to read:

65995.2. (a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the

limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

SEC. 27.5. Section 65996 of the Government Code is amended to read:

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of

conditions for the approval of a development project, as defined in Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(e) Section 53080 of the Government Code.

(f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

SEC. 28. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which

the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permit holder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, has the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a "proposed construction schedule or plan" be adopted include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 29. Section 66413.7 is added to the Government Code, to read:

66413.7. Whenever there is consideration of an area within a development for a public school site, the advisory agency shall give the State Department of Education written notice of the proposed site. If the site is within the distance of an airport runway as described in Section 39005 of the Education Code, the department shall notify the State Department of Transportation as required by the section. The State Department of Education shall investigate the proposed site and, within 35 days after receipt of the notice, shall submit to the advisory agency and school district a written report and its recommendations concerning the site.

The governing board of the school district shall not acquire title to the property until the report of the State Department of Education has been received. If the report does not favor the acquisition of the property for a schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the school district or, if there is no newspaper of this type, in a newspaper of general circulation within the county in which the property is located.

SEC. 30. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) For every sale by a dealer of a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to the provisions of subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within three working days of receipt, one of which shall be the day of receipt. For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrow holder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrowholder.

section.

SEC. 34. The Legislature finds and declares that paragraph (2) of subdivision (a) of Section 53080 of the Government Code and paragraph (1) of subdivision (b) of Section 65995 of the Government Code, as set forth in this act, are declaratory of existing law.

SEC. 35. The Legislature finds and declares that the system of school facilities funding addressed by this act is in vital need of additional sources of revenue. Accordingly, it is the intent of the Legislature in the 1989–90 Regular Session to approve a state general obligation bond measure in the amount of one billion dollars ($1,000,000,000) to fund the construction and reconstruction of public school facilities, and to submit that bond measure to the voters of this state for their approval at the primary election to be held June 5, 1990.

SEC. 36. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary clarifying and other revisions to the provisions of law authorizing the collection of developer fees by school districts, which provisions are currently in effect, it is necessary that this act take effect immediately.

CHAPTER 1217

An act to amend Sections 53341.5 and 66007 of, and to amend and renumber Section 53340.1 of, the Government Code, to amend Section 987.8 of the Penal Code, to amend Section 16472.1 of the Public Utilities Code, and to amend Section 3114.5 of the Streets and Highways Code, relating to liens.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 53340.1, as added to the Government Code by Chapter 1365 of the Statutes of 1988, is amended and renumbered to read:

53340.2. The legislative body levying the special tax shall designate an office, department, or bureau of the local agency which shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and which will be responsible for estimating future special tax levies. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate.

SEC. 2. Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter for which a public report is not required pursuant to Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall state the following in clear and simple language:

(1) That the property being purchased is or will be subject to a special tax.

(2) The maximum annual amount of the special tax, and the number of years for which it will be levied.

(3) The types of facilities or services to be paid for with the proceeds of the special tax.

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the

purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section 1350, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) If any disclosure required to be made by this section is delivered after the execution of an agreement to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent. Any disclosure delivered after the execution of an agreement to purchase shall contain a statement describing the buyer's right, method and time to rescind as prescribed by this subdivision.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars ($500). In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 3. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency

has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted,

include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 4. Section 987.8 of the Penal Code is amended to read:

987.8. (a) Upon a finding by the court that a defendant is entitled to counsel but is unable to employ counsel, the court may hold a hearing or, in its discretion, order the defendant to appear before a county officer designated by the court, to determine whether the defendant owns or has an interest in any real property or other assets subject to attachment and not otherwise exempt by law. The court may impose a lien on any real property owned by the defendant, or in which the defendant has an interest to the extent permitted by law. The lien shall contain a legal description of the property, shall be recorded with the county recorder in the county or counties in which the property is located, and shall have priority over subsequently recorded liens or encumbrances. The county shall have the right to enforce its lien for the payment of providing legal assistance to an indigent defendant in the same manner as other lienholders by way of attachment, except that a county shall not enforce its lien on a defendant's principal place of residence pursuant to a writ of execution. No lien shall be effective as against a bona fide purchaser without notice of the lien.

(b) In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.

(c) In any case in which the defendant hires counsel replacing a publicly provided attorney; in which the public defender or appointed counsel was required by the court to proceed with the case after a determination by the public defender that the defendant is not indigent; or, in which the defendant, at the conclusion of the case, appears to have sufficient assets to repay, without undue hardship, all or a portion of the cost of the legal assistance provided to him or her, by monthly installments or otherwise; the court shall make a determination of the defendant's ability to pay as provided in subdivision (b), and may, in its discretion, make other orders as

provided in that subdivision.

This subdivision shall be operative in a county only upon the adoption of a resolution by the board of supervisors to that effect.

(d) If the defendant, after having been ordered to appear before a county officer, has been given proper notice and fails to appear before a county officer within 20 working days, the county officer shall recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the defendant. The notice to the defendant shall contain all of the following:

(1) A statement of the cost of the legal assistance provided to the defendant as determined by the court.

(2) The defendant's procedural rights under this section.

(3) The time limit within which the defendant's response is required.

(4) A warning that if the defendant fails to appear before the designated officer, the officer will recommend that the court order the defendant to pay the full cost of the legal assistance provided to him or her.

(e) At a hearing, the defendant shall be entitled to, but shall not be limited to, all of the following rights:

(1) The right to be heard in person.

(2) The right to present witnesses and other documentary evidence.

(3) The right to confront and cross-examine adverse witnesses.

(4) The right to have the evidence against him or her disclosed to him or her.

(5) The right to a written statement of the findings of the court.

If the court determines that the defendant has the present ability to pay all or a part of the cost, the court shall set the amount to be reimbursed and order the defendant to pay the sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Failure of a defendant who is not in custody to appear after due notice is a sufficient basis for an order directing the defendant to pay the full cost of the legal assistance determined by the court. The order to pay all or a part of the costs may be enforced in the manner provided for enforcement of money judgments generally but may not be enforced by contempt.

Any order entered under this subdivision is subject to relief under Section 473 of the Code of Civil Procedure.

(f) Prior to the furnishing of counsel or legal assistance by the court, the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. The court shall also give notice that, if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost. The notice shall inform the defendant that the order shall have the same force and effect as a judgment in a civil action and shall be subject to enforcement against the property of the defendant

in the same manner as any other money judgment.

(g) As used in this section:

(1) "Legal assistance" means legal counsel and supportive services including, but not limited to, medical and psychiatric examinations, investigative services, expert testimony, or any other form of services provided to assist the defendant in the preparation and presentation of the defendant's case.

(2) "Ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not be limited to, all of the following:

(A) The defendant's present financial position.

(B) The defendant's reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant's reasonably discernible future financial position. Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense.

(C) The likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing.

(D) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs of the legal assistance provided to the defendant.

(h) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change in circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time it renders the judgment.

(i) This section shall apply to all proceedings, including contempt proceedings, in which the party is represented by a public defender or appointed counsel.

SEC. 5. Section 16472.1 of the Public Utilities Code is amended to read:

16472.1. (a) Notwithstanding Sections 16469 to 16472, inclusive, and as an alternative to the procedures specified in those sections, a district may provide by resolution or ordinance that delinquent water charges and interest and penalties thereon constitute a lien on the real property served to the extent that the property is owned by the person or entity receiving the service, when a certificate is recorded pursuant to this section, which shall continue in effect until the amount of charges, interest, and penalties are paid or the property is sold to satisfy the charges, interest, and penalties. No lien may be created under this section on any publicly owned property.

(b) A lien pursuant to this section attaches when the district files for record in the office of the county recorder a certificate specifying

the amount of charges, interest, and penalties due; the name of the owner of record of the property who received the water service; the legal description of the property served; and the fact that the district has complied with all provisions of this part in the determination of the charges, interest, and penalties due. From the time of recordation of the certificate, the charges, interest, and penalties constitute a lien on the property. Within 30 days of receipt of payment of all costs specified in subdivision (a), or within 30 days of a demand by an escrow agent in the event of a voluntary sale, the district shall record in the office of the county recorder a release of the lien created by this section.

(c) The county recorder shall charge the district the fees specified in Sections 27361 and 27361.4 of the Government Code for recording any certificate pursuant to subdivision (b), which certificate shall be indexed to the name of the property owner as grantor and the district as grantee.

(d) This section is in addition to any other remedies available to a district.

SEC. 6. Section 3114.5 of the Streets and Highways Code is amended to read:

3114.5. (a) This section applies only to community facilities districts.

(b) Within 15 days after determination pursuant to Section 53328 of the Government Code that the requisite number of voters are in favor of the levy of a special tax, the clerk of the legislative body shall execute and record a notice of special tax lien in the office of the county recorder of each county in which all or any part of the community facilities district is located, and the county recorder shall accept that notice. The county recorder shall index the notice of special tax liens to the names of the property owners within the community facilities district and shown in the notice, as grantors. The notice of special tax lien shall contain the information required by Section 27288.1 of the Government Code and shall be in substantially the following form:

NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of _____, State of California, hereby gives notice that a lien to secure payment of a special tax which the (here insert name of legislative body) of (here insert city and name of county thereafter), State of California is authorized to levy is hereby imposed. The special tax secured by this lien is authorized to be levied for the purpose of: (as applicable) (1) paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed); (2) providing (briefly described facilities financed without bonds); (3) providing (briefly described services being financed).

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The special tax is authorized to be levied within Community Facilities District No. _____ which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax is as follows: (here insert verbatim the description of the rate, method of apportionment, and manner of collection from the resolution of formation of the community facilities district). Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as follows: (here insert such conditions as are set forth in the resolution of formation or, if no provision has been made for prepayment of the special tax obligation, so state).

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Community Facilities District No. _____ in accordance with Section 3115.5 of the Streets and Highways Code.

The name(s) of the owner(s) of the real property included within this community facilities district as they appear on the latest secured assessment roll as of the date of recording of this notice are as follows: (insert names of owners shown on assessment roll).

Reference is made to the boundary map (or the amended boundary map) of the community facilities district recorded at Book _____ of Maps of Assessment and Community Facilities Districts at Page _____, in the office of the County Recorder for the County of _____, State of California which map is now the final boundary map of the community facilities district.

The assessor's tax parcel(s) numbers of all parcels or any portion thereof which are included within this community facilities district are as follows: (insert tax parcel number(s)).

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact (here provide name, address, and telephone number of the appropriate office, department, or bureau of the public entity designated pursuant to Section 53340.1 of the Government Code).

(c) The county recorder shall endorse upon the notice the time and date of filing, and shall cross index the notice by reference to the page of the book of maps of assessment and community facilities districts in which the boundary map of the district was filed.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 633

An act to amend Section 17705.5 of the Education Code, and to amend Sections 53080.1 and 65995.1 of the Government Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 8, 1990. Filed with Secretary of State September 11, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 17705.5 of the Education Code is amended to read:

17705.5. (a) The total building cost portion of any state funding for any project approved under this chapter for the construction of one or more school facilities shall be reduced by the amount of the local matching share requirement computed under subdivision (b).

(b) Each school district to which funds are allocated pursuant to this chapter for the construction or reconstruction of one or more school facilities shall provide, as its share of the cost of the project, an amount equal to the product of the applicable maximum fee authorized under Section 53080 of the Government Code, or Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code, or both, times the number of square feet of new residential, commercial, and industrial construction, as appropriate, for which building permits are issued within the boundaries of the school district from the date on which the board approves the district's application for project funding under this chapter to the date upon which the notice of completion for the project is issued. Notwithstanding any other provision of this paragraph, as to any construction for which the payment of a fee, charge, or dedication is required under a contract as described in paragraph (1) of subdivision (c) of Section 65995 of the Government Code, the matching share required under this subdivision shall be deemed to be the maximum payment that may be required under that contract as a condition of the approval of that construction. The amount calculated in this subdivision is reduced by the sum of the following:

(1) Any amounts expended by the district during the described period of time for the acquisition of interim classroom facilities pursuant to Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code from the proceeds of the fee levied by the district during that period. This amount is limited to the acquisition of interim classroom facilities necessary to temporarily house that number of pupils calculated, under state pupil loading standards, by subtracting the average daily attendance of the district based on a three-year enrollment projection from the average daily attendance of the district based on a five-year

enrollment projection. Notwithstanding that limit, the board may authorize the acquisition of additional interim classroom facilities for the purposes of this paragraph to the extent it determines that acquisition to be necessary to alleviate severe classroom overcrowding. Enrollment projections for this purpose shall be made in accordance with this chapter.

(2) Any amounts expended by the district during the described period of time for the local matching share of any project funded under this chapter from the proceeds of the fee levied by the district during that period.

(3) An amount reflecting the extent to which the district is precluded from collecting those fees by reason of the levy and collection of developer fees by another school district having common territorial jurisdiction.

(4) An amount reflecting the reasonable administrative expenses incurred by the school district in calculating and collecting the fees or other requirements levied by the school district during that period. If the school district has entered into an agreement pursuant to subdivision (a) of Section 53080 of the Government Code whereby the fees or other requirements imposed are collected in whole or in part by a city or county, the amount of administrative expenses calculated under this paragraph shall include any amount paid by the school district to the city or county as reimbursement for that service. In no event shall the total amount of the administrative expenses calculated under this paragraph exceed 3 percent of the fees collected during that period.

(c) Where part or all of the local matching share is funded from the proceeds of a special tax or other charge, rather than from the imposition of a school facilities fee or other requirement, the applicant district shall not be required to pay that amount of the local matching share until those proceeds become available to the district.

(d) For purposes of establishing an estimate of the state project costs pursuant to subdivision (a), the board may estimate the local matching share by using the product of the annual average of the amount that would have resulted from the application of the maximum fee to the square footage of all new construction within the district over the three calendar years preceding the district's project application times the number of years over which the board estimates the fee will be collected by the district pursuant to the project to be funded.

(e) Only those project applications for which, prior to January 1, 1987, the board had made the apportionment for site acquisition and working drawings or the final apportionment for construction of the project shall be subject to the provisions of this chapter in effect prior to that date.

(f) The board may provide a loan to any applicant district in an amount equal to all or a part of the district's obligation under subdivision (b), subject to the requirement that the district pay each month to the board, as reimbursement, an amount equal to the

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proceeds that would be received by the district from the imposition of the fee described under subdivision (b) until the total amount of the loan has been repaid, together with interest computed pursuant to Section 16065.

(g) The board may make the loan specified in subdivision (f) from any funds available from any source, including, but not limited to, those amounts made available pursuant to Section 16065.

(h) All loan and interest amounts paid to the state pursuant to this section shall be available for the use of the board in the funding of projects as otherwise provided under this chapter, including, but not limited to, additional loans.

(i) The board is authorized to accept from applicant school districts, as a method of compliance with all or part of the local matching share requirement calculated under this section, land that will be part of the project for which the matching share is to be paid, in which event title to the land shall be conveyed to the state. The board shall determine the value of the land to be used for this purpose, and shall adopt rules and regulations as necessary to otherwise implement this subdivision.

(j) This section shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

SEC. 2. Section 53080.1 of the Government Code is amended to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or

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safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge,

dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 3. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 4. Section 1 of this act shall not become operative if Assembly Bill 3185, Senate Bill 79, or Senate Bill 2780 of the 1989–90 Regular Session (1) is enacted and becomes effective on or before January 1, 1991, but prior to the effective date of this bill, and (2) amends Section 17705.5 of the Education Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of theConstitution and shall go into immediate effect. The facts constituting the necessity are:

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In order to mitigate the expense being incurred by school districts in order to comply with existing provisions of law requiring that designated findings be made prior to the imposition of certain school facilities fees or other requirements, it is necessary that this act take effect immediately.

CHAPTER 1572

An act to amend Sections 56383, 65104, 65354.5, 65358, 65456, 65863.7, 65909.5, 66000, 66004, and 66010 of, to add Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) to Division 1 of Title 7 of, and to repeal Sections 65962, 66008, 66009, and 66017 of, and Chapter 12.6 (commencing with Section 54989), Chapter 13 (commencing with Section 54990), Chapter 13.1 (commencing with Section 54994.1), Chapter 13.5 (commencing with Section 54995), and Chapter 14 (commencing with Section 54997) of Part 1 of Division 2 of Title 5 of, the Government Code, to amend Sections 4746.5, 17951, 19132.3, and 19852 of the Health and Safety Code, to amend Section 21671.5 of the Public Utilities Code, and to amend Section 77.1 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959), relating to local government fees.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 12.6 (commencing with Section 54989) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 2. Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 3. Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 4. Chapter 13.5 (commencing with Section 54995) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 5. Chapter 14 (commencing with Section 54997) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 6. Section 56383 of the Government Code is amended to read:

56383. (a) The commission may establish a schedule of fees for the costs of proceedings taken pursuant to this division, including, but not limited to, all of the following:

(1) Checking the sufficiency of any petition filed with the executive officer.

(2) Filing and processing applications filed with the commission.

(3) Proceedings undertaken by the commission and any reorganization committee.

(4) Amending a sphere of influence.

(5) Reconsidering a resolution making determinations.

(b) The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016.

(c) The commission may require that a fee be deposited with the

including removal, transportation, and reinstallation of the mobilehome and accessories at the new site, indemnification for any damage to personal property of the resident caused by the relocation, reasonable living expenses of displaced park residents from the date of actual displacement until the date of occupancy at the new site, payment of any security deposit required at the new site and the difference between the rent paid in the existing park and any higher rent at the new site for the first 12 months of the relocated tenancy.

(2) The cost of purchasing a mobilehome of a displaced mobilehome owner at a value to be determined. Where the mobilehome cannot be relocated due to age or condition, as determined by the local legislative body or advisory agency, this paragraph may apply.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

SEC. 12. Section 65909.5 of the Government Code is amended to read:

65909.5. The legislative body of any county or city, including a charter city, may establish reasonable fees for the processing of use permits, zone variances, or zone changes pursuant to the procedures required or authorized by this chapter or local ordinance, but the fees shall not exceed the amount reasonably required to administer the processing of such permits or zone variances. The fees shall be imposed pursuant to Sections 66014 and 66016.

SEC. 13. Section 65962 of the Government Code is repealed.

SEC. 14. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special

assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services, and community amenities.

SEC. 15. Section 66004 of the Government Code is amended to read:

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

SEC. 16. Section 66008 of the Government Code is repealed.

SEC. 17. Section 66009 of the Government Code is repealed.

SEC. 18. Section 66010 of the Government Code is amended to read:

66010. As used in this chapter:

(a) "Development project" means a development project as defined in Section 66000.

(b) "Fee" means a monetary exaction or a dedication, other than a tax or special assessment, which is required by a local agency of the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.

(c) "Local agency" means a local agency, as defined in Section 66000.

(d) "Public facilities" means public facilities, as defined in Section 66000.

(e) "Reconstruction" means the reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

SEC. 19. Chapter 7 (commencing with Section 66012) is added to Division 1 of Title 7 of the Government Code, to read:

65100) of Division 1 of Title 7 or under any other authority; those fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee subject to this section shall be brought pursuant to Section 66022.

SEC. 20. Chapter 8 (commencing with Section 66016) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 8. PROCEDURES FOR ADOPTING VARIOUS FEES

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

66017. (a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner that 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

66018. (a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

66018.5. "Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

SEC. 21. Section 66017 of the Government Code is repealed.

SEC. 22. Chapter 9 (commencing with Section 66020) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9. PROTESTS, LEGAL ACTIONS, AND AUDITS

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set

aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

66021. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest, as provided in Sections 66020 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66020 and 66475.4, Section 66475.4 shall prevail over Section 66020 to the extent of any conflict between those two sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act which contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

66022. (a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of

the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

66023. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

66024. (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city,

county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

66025. "Local agency," as used in this chapter, means a local agency as defined in Section 66000.

SEC. 23. Section 4746.5 of the Health and Safety Code is amended to read:

4746.5. Notwithstanding any other provision of law, the Triunfo County Sanitation District may do all of the following:

(a) The district may, within or without the district:

(1) Take real and personal property of every kind, for any district purpose, by grant, purchase, gift, devise, or lease.

(2) Hold, use, enjoy, lease, or dispose of real and personal property of every kind.

(b) The district may lease from any person, or public corporation or agency, with the privilege of purchasing or otherwise, all or any part of any facilities necessary or convenient to any district purpose, either existing or constructed by the lessor for district use.

(c) If funds are needed to meet current expenses of maintenance and operation, the district may incur indebtedness by the issuance of negotiable promissory notes pursuant to this section, without an election. The notes shall be general obligations of the district payable in the same manner as bonds of the district, shall mature not later than two years from the date thereof, and shall bear interest at a rate not to exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as provided therein. The aggregate amount of the notes outstanding at any one time shall not exceed an amount equal to seven cents ($0.07) on each one hundred dollars ($100) of the assessed valuation of the taxable real property within the district as shown on the last equalized assessment roll of the county. If the assessed valuation is not obtainable, the county auditor's estimate of the assessed valuation of the taxable real property within the district for the fiscal year in which the indebtedness is to be incurred shall be used.

All the notes shall be issued after the adoption of a resolution by a four-fifths vote of the district board setting forth the following:

(a) The necessity for the borrowing.

(b) The assessed valuation of the taxable real property within the district, or the auditor's estimate thereof.

(c) The amount of funds to be borrowed.

(d) The date, maturity, denomination, and form of such notes.

The notes shall be signed by the chairperson of the district board and countersigned by the county treasurer and the seal of the district board shall be affixed.

The district board shall cause the board of supervisors to levy and

SEC. 30. Section 11.5 of this bill incorporates amendments to Section 65863.7 of the Government Code proposed by both this bill and SB 399. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 65863.7 of the Government Code, and (3) this bill is enacted after SB 399, in which case Section 11 of this bill shall not become operative.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 536

An act to amend Section 65995.1 of the Government Code, relating to migrant worker housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 1991. Filed with Secretary of State October 7, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the

limits set forth in subdivision (a) or (b).

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address serious problems regarding the provision and funding of migrant agricultural worker housing, it is necessary that this act take effect immediate effect.

CHAPTER 169

An act to amend Section 66006 of the Government Code, relating to development.

[Approved by Governor July 11, 1992. Filed with Secretary of State July 13, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 60 days of the close of each fiscal year, make available to the public the beginning and ending balance for the fiscal year and the fee, interest, and other income and the amount of expenditure by public facility and the amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001 during the fiscal year.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee within the meaning of subdivision (b) of Section 66000, and that is imposed by the local

agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that subdivision (a) shall supersede all conflicting local laws and shall apply in charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 231

An act to amend Sections 65858 and 66007 of the Government Code, relating to land use.

[Approved by Governor July 18, 1992. Filed with Secretary of State July 20, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 65858 of the Government Code is amended to read:

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to

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study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains a finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

(d) Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

SEC. 2. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the

development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of

enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

CHAPTER 487

An act to amend Section 66016 of the Government Code, and to amend Section 41901 of the Public Resources Code, relating to solid waste.

[Approved by Governor August 16, 1992. Filed with Secretary of State August 17, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed

notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 2. Section 41901 of the Public Resources Code is amended to read:

41901. A city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan prepared pursuant to this division. The fees shall be based on the types or amounts of the solid waste, and shall be used to pay the actual costs incurred by the city or county in preparing, adopting, and implementing the plan, as well as in setting and collecting the local fees. In determining the amounts of the fees, a city or county shall include only those costs directly related to the preparation, adoption, and implementation of the plan and the setting and collection of the local fees. A city, county, or city and county shall impose the fees pursuant to Section 66016 of the Government Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 605

An act to amend Section 66020 of the Government Code, relating to fees.

[Approved by Governor September 8, 1992. Filed with Secretary of State September 9, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1354

An act to add and repeal Article 5 (commencing with Section 17760) of Chapter 22 of Part 10 of the Education Code, to amend Sections 65995 and 65996 of, and to add and repeal Sections 65995, 65995.3, and 65996 of, the Government Code, and to repeal Section 34 of Chapter 1209 of the Statutes of 1989, relating to school facilities.

[Approved by Governor September 30, 1992. Filed with Secretary of State September 30, 1992.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to enact a new program for the financing of school facilities in accordance with the following principles:

(a) Primary financial responsibility for school facilities should rest with school districts.

(b) School districts should be authorized to raise a sufficient amount of revenue locally to finance a majority of their school facility needs.

(c) The role of the state should be limited to:

(1) Using state funds to supplement the local revenues of those school districts having low assessed valuation.

(2) Using state funds to finance needed school facilities for those school districts that have met or exceeded their debt capacity.

(3) Using state funds to provide interim school facilities for those school districts that are unable to supply the expected level of local revenues.

SEC. 2. Article 5 (commencing with Section 17760) is added to Chapter 22 of Part 10 of the Education Code, to read:

Article 5. Repeal of Chapter

17760. This chapter shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 3. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.

(c) (1) Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development.

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section

48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

(g) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

SEC. 4. Section 65995 is added to the Government Code, to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, whether by administrative or legislative action, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

(g) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

SEC. 5. Section 65995.3 is added to the Government Code, to read:

65995.3. (a) In addition to the fee, charge, dedication, or other requirement specified in subdivision (b) of Section 65995, an additional fee, charge, dedication, or other requirement of one dollar ($1) per square foot of assessable space may be levied by the governing board of a school district against that residential construction described in subparagraphs (B) and (C) of paragraph (1) of subdivision (a) of Section 53080 for the construction or reconstruction of school facilities.

(b) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

SEC. 6. Section 65996 of the Government Code is amended to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) This section shall become inoperative on January 1, 1993, and shall remain inoperative until the date that Assembly Constitutional

Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section shall become operative.

SEC. 7. Section 65996 is added to the Government Code, to read:

65996. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project by administrative or legislative action pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(3) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(5) Section 53080 of the Government Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Title 7 (commencing with Section 65000), deny approval of a project on the basis of the adequacy of school facilities, or impose conditions on the approval of a project for the purpose of providing school facilities that exceed the amounts authorized pursuant to this chapter.

(c) This section shall have prospective application only, and shall not affect any action taken by a local agency prior to the effective date of this section.

(d) This section shall remain in effect only until the date that Assembly Constitutional Amendment 6 of the 1991–92 Regular Session fails to receive the approval of a majority of the voters voting on the measure, and as of that date this section is repealed.

SEC. 8. Section 34 of Chapter 1209 of the Statutes of 1989 is repealed.

SEC. 9. (a) The Legislature finds and declares that paragraph (2) of subdivision (a) of Section 53080 of the Government Code and paragraph (1) of subdivision (b) of Section 65995 of the Government Code, as amended by Chapter 1209 of the Statutes of 1989, are declaratory of existing law.

(b) This section shall become operative on the date that Assembly Constitutional Amendment 6 of the 1991-92 Regular Session fails to receive the approval of a majority of the voters voting on the measure.

SEC. 10. Sections 1 and 2 of this act shall become operative only upon the approval of Assembly Constitutional Amendment 6 of the

1991–92 Regular Session by a majority of voters voting on the measure.

BILL NUMBER: AB 2211 CHAPTERED 10/01/93

CHAPTER 589
FILED WITH SECRETARY OF STATE OCTOBER 1, 1993
APPROVED BY GOVERNOR SEPTEMBER 28, 1993
PASSED THE ASSEMBLY AUGUST 26, 1993
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AMENDED IN SENATE JUNE 24, 1993

INTRODUCED BY Committee on Judiciary as presented by Assembly Member Goldsmith on behalf of the committee (Archie-Hudson, Caldera, Collins, Connolly, Epple, Terry Friedman, Horcher, Isenberg, Snyder, Speier, Statham, and Weggeland)

MARCH 5, 1993

An act to amend Sections 1680, 1696, 2353, 2612, 2664, 2770.10, 2878, 3750, 4869, 7028.1, 7045, 7159, 7163, 9793, 10236.2, and 19617.7 of, to amend and renumber Section 17510.8 of, and to repeal Section 10161.75 of, the Business and Professions Code, to amend Sections 43.93, 712, 1363.2, 1689.7, and 1942.4 of the Civil Code, to amend Sections 116.232, 473.1, 483.010, 483.015, and 1174.2 of the Code of Civil Procedure, to amend Section 4406 of the Commercial Code, to amend Sections 8804, 14504.2, 17878, 32241, 32242, 32243, 32244, 32245, 41320.1, 42238.15, 44010, 44253.6, 47602, 47605, 48204, 51220, 52772, 56345, 60004, 66301, 69274, 88116, 88127, 89701, and 94367 of, and to amend and renumber Sections 1597.95 and 67358 of, the Education Code, to amend Section 3567 of, and to repeal Section 23512.2, as added by Chapter 219 of the Statutes of 1992, of, the Elections Code, to amend Section 1107 of the Evidence Code, to amend Section 13080 of the Financial Code, to amend Section 3203 of the Fish and Game Code, to amend Sections 14611, 15071.5, 58110, and 74734.5 of, and to amend the heading of Article 4 (commencing with Section 58591) of Chapter 6 of Part 1 of Division 21 of, the Food and Agricultural Code, to amend Sections 3549.1, 13923, 15436, 20024.002, 25830.1, 51021, 53312.7, 53313.5, 53340.2, 53830.5, 65250, 65583.1, 66020, and 68560.5 of the Government Code, to amend and renumber Section 6832 of the Harbors and Navigation Code, to amend Sections 372, 1250, 1428, 1569.692, 1569.73, 11100, 11370.9, 11650, 11837, 11838.4, 15076, 17033, 17060, 18420, 18421, 19870, 25163, 25179.13, 25244.19, 25698, 25817.1, 32126, and 36005 of the Health and Safety Code, to amend Sections 1776 and 3852 of the Labor Code, to amend Sections 290, 290.3, 374.8, 422.75, 457.1, 549, 602, 653m, 853.6, 999t, 1000.6, 1001.65, 1048.1, 1203.1g, 1463.007, 1465.5, 4532, 6242, 12022.9, and 12288.5 of, the Penal Code, to amend Sections 8572 and 8574 of the Probate Code, to amend Section 10332 of the Public Contract Code, to amend Sections 30301, 30340, and 42774 of the Public Resources Code, to amend Sections 1802 and 99243 of the Public Utilities Code, to amend Sections 53, 75.11, 214.02, 6201.3, 8272, 8273, 9272, 9273, 9276, 17207, 19405, 23801, 24347.5, 25962, 30459.2, 30459.3, 32472, 32473, 40096, 40212, 40213, 41172, 41173, 43523, 43524, 45862, 45868, 45869, 45870, 45871, 46153, 50156.2, 50156.10, 50156.12, 50156.13, 50156.15, and 50156.16 of, and to repeal Sections 17208, 17208.1, 17208.2, 17208.3, 24347.6,

SEC. 80. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take

precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a residential housing development takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

SEC. 81. Section 68560.5 of the Government Code is amended to read:

68560.5. As used in this article:

(a) "Court proceeding" means a civil, criminal, or juvenile proceeding, excluding a small claims proceeding, and a deposition.

(b) "Interpreter" does not include (1) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or hard-of-hearing persons, or (2) an interpreter qualified for administrative hearings or noncourt settings under Section 11513.

SEC. 82. Section 6832 of the Harbors and Navigation Code, as added by Chapter 680 of the Statutes of 1991, is amended and renumbered to read:

6832.5. Notwithstanding any other provision of law, the creation of any indebtedness by the Sacramento-Yolo Port District pursuant to this chapter shall require the prior authorization of a five-sevenths majority vote of the members of the port commission.

and housing sponsors of housing developments pursuant to this chapter from that fund for a period of four years as follows:

(1) Twenty-eight million dollars ($28,000,000) shall be available for the program set forth in paragraph (1) of subdivision (a) of Section 51451, except that any funds not expended within 18 months shall be available for programs set forth in paragraphs (2) and (3) of subdivision (a) of Section 51451.

(2) Twenty-eight million dollars ($28,000,000) shall be available for the program set forth in paragraph (2) of subdivision (a) of Section 51451.

(3) Fifty-two million dollars ($52,000,000) shall be available for the program set forth in paragraph (3) of subdivision (a) of Section 51451.

(4) Fifty-two million dollars ($52,000,000) shall be available for the program set forth in subdivision (b) of Section 51451.

51453. Twenty-five percent of the funds available in each of the programs pursuant to Section 51452 shall be allocated in each of the four fiscal years, commencing with the **1998**-99 fiscal year.

51454. The Legislative Analyst's Office shall submit a report to the Legislature and the Governor no later than January 1, 2001, regarding the effectiveness of the programs established pursuant to this chapter.

51455. This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed.

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CHAPTER 1195
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AMENDED IN ASSEMBLY JULY 2, 1993
AMENDED IN ASSEMBLY JUNE 28, 1993
AMENDED IN SENATE MAY 19, 1993
AMENDED IN SENATE MAY 4, 1993

INTRODUCED BY Committee on Local Government (Senators Bergeson (Chairman), Ayala, Calderon, Craven, Hughes, Kopp, Presley, and Thompson)

FEBRUARY 23, 1993

An act to amend Sections 4201, 6159, 8162.9, 8180, 23101, 23119, 23130, 23133, 24000, 24250, 24256, 24304, 25332, 25845, 27008, 29088, 36934, 37110, 53080.1, 53534, 53901, 56844, 57025, and 68096.1 of, to add Sections 25521.5, 26990, 57330, and 65352.5 to, to repeal Section 40101 of, and to repeal Article 5.5 (commencing with Section 65958) of Chapter 4.5 of Division 1 of Title 7 of, the Government Code, to amend Sections 6937 and 6944 of, and to repeal Section 6832 of the Harbors and Navigation Code, to amend Sections 6487, 13800, and 13893 of, and to add Sections 4730.8 and 6480.7 to, the Health and Safety Code, to amend Sections 20206.9 and 22300 of, to add Section 20131 to, and to repeal Sections 9202, 20206.7, and 20206.8 of, the Public Contract Code, to add Sections 5541.2 and 5552.1 to the Public Resources Code, to add Section 97.05 to the Revenue and Taxation Code, to amend Section 1806 of the Streets and Highways Code, to amend Sections 21102, 21375, 21560, 22980, 74661, and 74466 of, and to add Section 75601 to, the Water Code, to amend Section 11 of Chapter 129 of the Statutes of 1868, to amend Sections 26.6 and 26.9 of Chapter 1405 of the Statutes of 1951, to amend Section 7.1 of Chapter 2137 of the Statutes of 1959, and to amend Section 700 of Chapter 1399 of the Statutes of 1987, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, Bergeson. Local agencies.

Existing law authorizes local agencies to utilize "native spoil" for utility excavation backfills.

This bill would authorize local agencies to specify that usage in their contracts.

Existing law permits, in general, a city, county, city and county, or other public agency to authorize the acceptance of a credit card for various payments. Existing law permits the acceptance of a credit card rendered by any city, county, or city and county but not by any other public agency.

introduction or passage. When ordinances, other than urgency ordinances, are altered after introduction, they shall be passed only at a regular or at an adjourned regular meeting held at least five days after alteration. Corrections of typographical or clerical errors are not alterations within the meaning of this section.

SEC. 12.3. Section 37110 of the Government Code is amended to read:

37110. The legislative body may spend money from the general fund for music and promotion, including promotion of sister city and town affiliation programs.

SEC. 12.5. Section 40101 of the Government Code is repealed.

SEC. 12.7. Section 53080.1 of the Government Code is amended to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020, except that the procedures set forth in Section 66021 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 13. Section 53534 of the Government Code is amended to read:

53534. Any provision of law to the contrary notwithstanding, a city, county, or city and county may enter into contracts commonly known as "interest rate swap agreements" or "forward payment conversion agreements" with any person providing for the exchange of payments between the person and the city, county,

sufficient to cover administrative costs of collection, size of water-producing facility discharge opening, area served by the water-producing facility, number of persons served by the water-producing facility, use of land served by the water-producing facility, crops grown on land served by the water-producing facility, or any other criteria or criteria which may be used to determine with reasonable accuracy the amount of water produced from that water-producing facility. The district may levy an annual charge upon a water-producing facility for which no production has been recorded but which has not been permanently abandoned if that charge does not exceed the annual cost to the district of maintaining and administering the registration of that facility.

SEC. 31.7. Section 700 of the Colusa Basin Drainage District Act, Chapter 1399 of the Statutes of 1987, is amended to read:

Sec. 700. The district may levy benefit assessments on a districtwide basis or within any zone, upon land only, as follows:

(a) An initial assessment for district expenses may be levied on the basis of an equal amount per acre as shown on the assessment rolls, but not to exceed ten cents ($0.10) per acre. It is hereby declared for that purpose that the benefit of district activities is received equally by all land. This initial assessment may be levied annually in lieu of the assessment specified in subdivision (b) until a plan has been approved pursuant to Section 610.

(b) Annual assessments pursuant to Sections 703 to 708, inclusive.

SEC. 32. With respect to Sections 9 and 19 of this act, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitutions because of the unique circumstances of the Counties of Butte, Merced, Orange, Riverside, and Ventura and the Riverside County Regional Park and Open-Space District, Capistrano Beach Sanitary District and the Dana Point Sanitary District.

SEC. 33. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 517 CHAPTERED 07/21/94

CHAPTER 300
FILED WITH SECRETARY OF STATE JULY 21, 1994
APPROVED BY GOVERNOR JULY 20, 1994
PASSED THE SENATE JULY 7, 1994
PASSED THE ASSEMBLY JULY 2, 1994
AMENDED IN ASSEMBLY JUNE 14, 1994
AMENDED IN ASSEMBLY MAY 4, 1994
AMENDED IN ASSEMBLY APRIL 5, 1994
AMENDED IN ASSEMBLY MARCH 17, 1994
AMENDED IN SENATE JUNE 23, 1993
AMENDED IN SENATE MAY 17, 1993
AMENDED IN SENATE MAY 10, 1993
AMENDED IN SENATE APRIL 12, 1993

INTRODUCED BY Senator Bergeson
(Coauthor: Senator Russell)
(Coauthor: Assembly Member Napolitano)

MARCH 1, 1993

An act to add Chapter 9.3 (commencing with Section 66030) to Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 517, Bergeson. Land use: mediation and resolution of land use disputes.

Existing law contains numerous provisions relating to the use of land, including provisions authorizing the bringing of actions in the superior court relating to land use disputes.

This bill would express specified findings and declarations of the Legislature relating to litigation arising out of land use disputes, and would also express legislative intent in this regard, including a statement that it is not the intent of the Legislature to interfere with litigants' ability to pursue court remedies. The bill would provide that specified land use actions brought in superior court may be subject to a mediation proceeding, as specified, conducted by the council of governments having jurisdiction in the county where the dispute arose, the Office of Permit Assistance within the Trade and Commerce Agency, or other specified persons or entities. The bill would establish procedures for initiating the mediation process, and for selecting a mediator. The bill would prescribe the reports and statements to be filed by the mediator, as specified, and would provide that specified Evidence Code sections apply to mediations conducted pursuant to the bill's provisions. It would also authorize the Judicial Council or courts to adopt rules, forms, and standards as necessary to implement the chapter.

This bill would require the Office of Permit Assistance, in cooperation with the Judicial Council, to report to the Legislature regarding implementation of the mediation program.

The bill would provide that no action filed on or after January 1, 2002, shall be subject to its provisions, unless a

later enacted statute, enacted before January 1, 2002, extends that date or deletes the section.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 9.3 (commencing with Section 66030) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9.3. MEDIATION AND RESOLUTION OF LAND USE DISPUTES

66030. (a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for an another 90-day period.

(e) A mediator shall not file, and a court shall not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise, in writing.

(f) Sections 703.5 and 1152.5 of the Evidence Code shall apply to any mediation conducted pursuant to this chapter.

66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Section 1152.5 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

66034. If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

66035. The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

66036. By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

66037. No action filed on or after January 1, 2002, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, 2002, extends this date or deletes this section.

BILL NUMBER: SB 1461 CHAPTERED 09/29/94

CHAPTER 983
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 1994
APPROVED BY GOVERNOR SEPTEMBER 28, 1994
PASSED THE SENATE AUGUST 26, 1994
PASSED THE ASSEMBLY AUGUST 23, 1994
AMENDED IN ASSEMBLY AUGUST 19, 1994
AMENDED IN ASSEMBLY AUGUST 8, 1994
AMENDED IN ASSEMBLY JUNE 22, 1994
AMENDED IN SENATE MAY 18, 1994
AMENDED IN SENATE APRIL 5, 1994

INTRODUCED BY Senator Craven
(Coauthor: Senator Ayala)

FEBRUARY 10, 1994

An act to add Sections 798.82 and 799.8 to the Civil Code, and to amend Section 53080.4 of the Government Code, relating to mobilehomes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1461, Craven. Mobilehomes: school district fees.

(1) Existing law authorizes a school district to levy a fee, charge, dedication, or other form of requirement against a development project, as defined, for purposes of funding the construction or reconstruction of school facilities. Existing law applies these provisions to manufactured homes and mobilehomes, under specified conditions.

This bill would provide that when a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household, as defined, is moved from a mobilehome park space where the mobilehome owner has resided in one school district, to a mobilehome park space in another school district, and is subject to these school facilities construction fees, the school district may waive the fee, as specified; otherwise, the district to which the manufactured home or mobilehome has been moved is required to grant the homeowner the necessary approval for occupancy, and permission to pay the fee in installments, as indicated, over a specified minimum time period. It would also authorize the school district to secure the fee as a lien perfected against the mobilehome or manufactured home. The imposition of new requirements on school districts with respect to the collection of these fees would create a state-mandated local program.

(2) The existing Mobilehome Residency Law generally regulates the conditions of residency in mobilehome parks, and subdivisions, cooperatives, and condominiums for mobilehomes.

This bill would require the management to disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome as indicated, on which the construction of the pad or foundation system commenced after September 1, 1986, and no other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school

facilities fee, as specified.

(3) This bill would also make technical nonsubstantive changes to existing law.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 798.82 is added to the Civil Code, to read:

798.82. The management, at the time of an application for residency, shall disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome on a space, on which the construction of the pad or foundation system commenced after September 1, 1986, and no other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school facilities fee under Sections 53080 and 53080.4 of, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of, the Government Code.

SEC. 2. Section 799.8 is added to the Civil Code, to read:

799.8. The management, at the time of an application for residency, shall disclose in writing to any person who proposes to purchase or install a manufactured home or mobilehome on a space or lot, on which the construction of the pad or foundation system commenced after September 1, 1986, and no other manufactured home or mobilehome was previously located, installed, or occupied, that the manufactured home or mobilehome may be subject to a school facilities fee under Sections 53080 and 53080.4 of, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of, the Government Code.

SEC. 3. Section 53080.4 of the Government Code is amended to read:

53080.4. (a) Notwithstanding any other provision of law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 53080 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located,

installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 53080 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September 1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 53080 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 53080 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge,

dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 1735 CHAPTERED 09/30/94

CHAPTER 1228
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 1994
APPROVED BY GOVERNOR SEPTEMBER 30, 1994
PASSED THE ASSEMBLY AUGUST 24, 1994
PASSED THE SENATE MAY 12, 1994
AMENDED IN SENATE APRIL 14, 1994

INTRODUCED BY Senator Greene

FEBRUARY 24, 1994

An act to amend Sections 17705, 17710, and 17785 of the Education Code, to amend Sections 14620, 15492, 65971, and 65974 of the Government Code, and to amend Section 24275 of the Health and Safety Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1735, Greene. School facilities.

Existing law establishes the Leroy F. Greene School Building Lease-Purchase Law of 1976 (Greene Act) for the purpose of providing funding to school districts for school facilities construction under certain conditions. Existing law confers various responsibilities and powers on the State Allocation Board relating to the administration of the Greene Act, including, among other things, the power to fix specified changes for any project, as specified.

This bill would make technical changes to certain provisions relating to the State Allocation Board's responsibilities and powers under the Greene Act. The bill would include, within the board's power to fix specified changes for any project, the power to fix those changes for rehabilitation of the project.

Existing law establishes the Emergency Classroom Law of 1979 for the purpose of providing school districts with funding for the lease of portable classrooms under certain conditions.

This bill would change the name of that law to the "State Relocatable Classroom Law of 1979."

Under existing law, there is within the Department of General Services the Office of Local Assistance and a local assistance officer. Under existing law, the Office of Local Assistance performs specified functions with respect to the construction of public schools.

This bill would refer to the Office of Public School Construction rather than the Office of Local Assistance. The bill would also change the name of the local assistance officer within the Department of General Services to the Executive Officer of the Office of Public School Construction.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, and submitting those recommendations to the State Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Public School Construction to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Public School Construction, as that staffing level existed on the operative date of this section.

SEC. 6. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed

and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

SEC. 7. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions

containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

SEC. 8. Section 24275 of the Health and Safety Code is amended to read:

24275. (a) The State Department of Health Services, in conjunction with the study required pursuant to Chapter 116 of the Statutes of 1986, shall report to the Legislature by January 1, 1987, and periodically thereafter, on the most effective air monitoring standard for the airborne concentration of asbestos in any public school building that is both economically and technologically feasible. If the department believes that the air monitoring standard for asbestos in public school buildings as specified in Section 49410.7 of the Education Code should be revised, it shall promulgate a regulation to that effect.

(b) The department shall provide the Office of Public School Construction with appropriate sampling methodology for use in taking air samples in public school buildings.

BILL NUMBER: SB 660 CHAPTERED 10/10/95

CHAPTER 686
FILED WITH SECRETARY OF STATE OCTOBER 10, 1995
APPROVED BY GOVERNOR OCTOBER 9, 1995
PASSED THE SENATE SEPTEMBER 13, 1995
PASSED THE ASSEMBLY SEPTEMBER 5, 1995
AMENDED IN ASSEMBLY AUGUST 31, 1995
AMENDED IN ASSEMBLY JULY 17, 1995
AMENDED IN ASSEMBLY JUNE 29, 1995
AMENDED IN ASSEMBLY JUNE 7, 1995
AMENDED IN SENATE MAY 2, 1995
AMENDED IN SENATE APRIL 24, 1995
AMENDED IN SENATE MARCH 28, 1995

INTRODUCED BY Committee on Housing and Land Use (Senators Campbell (Chairman), Costa, Kopp, Marks, Mello, Monteith, and Watson)

FEBRUARY 22, 1995

An act to amend Sections 51231, 51287, 65040, 65040.2, 65861, 66016, and 66031 of, and to repeal Sections 65036.5 and 65040.7 of, the Government Code, and to amend Sections 33216 and 50459 of the Health and Safety Code, relating to the Housing and Land Use Omnibus Act of 1995, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1995.

(1) Existing law, known as the Williamson Act, authorizes any city or county to contract with a landowner for the purpose of preserving land as an agricultural preserve, as specified. Existing law also authorizes cancellations of these contracts, under certain conditions, and further authorizes the city or county to charge a fee designed to cover the reasonable cost of services provided by the county incident to the cancellation, pursuant to specified provisions of existing law.

This bill would delete an obsolete statutory reference to those provisions of existing law that authorize the city or county to charge a fee for its services incident to the cancellation, and would replace it with an updated reference.

Existing law also requires rules related to compatible uses of lands covered by the Williamson Act to conform to specified statutory principles; however, the statute referred to in this regard is not drafted in terms of specified principles.

This bill would delete the reference to statutory principles, and would instead require the rules related to compatible uses to conform to the provisions of the specified statute.

(2) Under existing law, the Governor's Office of Planning and Research exists to further state policy to insure the preservation and use of land, so as to improve the quality of life in California, as specified. In connection with this policy, existing law requires

the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 6.5. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service

charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 7. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the

county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 7.5. Section 33216 of the Health and Safety Code is amended to read:

33216. (a) If all, or a substantial portion, of the territory included within a project area selected pursuant to Section 33322 is subsequently annexed to a city or included within the boundaries of a new city, the territorial jurisdiction of the agency of the county over all, or a substantial portion, of the territory in that project area may be transferred from the agency of the county to the agency of the city pursuant to this section. If all, or a substantial portion, of the noncontiguous territory of a project area of an agency of a county is subsequently annexed to a city or included within the boundaries of a new city, the jurisdiction of the agency of the county over all, or a substantial portion, of the noncontiguous territory may be transferred to the agency of the city pursuant to this section.

(b) The transfer of territorial jurisdiction described in subdivision (a) is not effective unless all of the following occur:

(1) The agency of the county and the agency of the city enter into the agreement described in subdivision (c), and the city council and the board of supervisors both adopt a resolution approving that agreement.

(2) The city council adopts, or has adopted, both of the following ordinances:

(A) An ordinance pursuant to Section 33101 declaring the need for an agency to function in the city.

(B) An ordinance adopting the same redevelopment plan for the project area that was previously adopted by the board of supervisors.

(c) The agreement required to be entered into between the agency of the county and the agency of the city pursuant to paragraph (1) of subdivision (b) shall contain all of the provisions described in paragraphs (1), (2), (3), and (4), and may contain the provisions described in paragraphs (5) and (6):

(1) A provision specifying that all of the territory included within the project area is transferred from the agency of the county to the agency of the city, or a provision specifying the portions of the project area over which each agency will have territorial jurisdiction.

assistance plan adopted pursuant to the Housing and Community Development Act of 1974 (Public Law 93-383).

SEC. 8.5. Section 6.5 of this bill incorporates amendments to Section 66016 of the Government Code proposed by this bill and SB 647. It shall only become operative if (1) both bills are enacted and become effective on or

before January 1, 1996, (2) each bill amends Section 66016 of the Government Code, and (3) this bill is enacted after SB 647, in which case Section 6 of this bill shall not become operative.

SEC. 9. All provisions of this act except Section 7.5 shall become operative on January 1, 1996.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure a timely, efficient, and progressive implementation of the changes authorized by this act by the appropriate local officials, it is necessary that this act take effect immediately.

BILL NUMBER: SB 1562 CHAPTERED 07/25/96

CHAPTER 277
FILED WITH SECRETARY OF STATE JULY 25, 1996
APPROVED BY GOVERNOR JULY 24, 1996
PASSED THE ASSEMBLY JULY 11, 1996
PASSED THE SENATE APRIL 25, 1996
AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or

of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars ($400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
CHAPTER 1. SCHOOLSITES
Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the

may designate, to expend up to one hundred dollars ($100) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the school district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance.

CHAPTER 6. DEVELOPMENT FEES, CHARGES, AND DEDICATIONS

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995 of the Government Code, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995 of the Government Code, exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(2) For purposes of this section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(3) For purposes of this section, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement

set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a), or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code, with Section 54994.1 of the Government Code, and with the procedures for mailed notice set forth in Section 54992 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for

adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge,

dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

17622. (a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 17620 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 17620, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 17620. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

17623. In the event the fee authorized pursuant to Section 17620 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995 of the Government Code, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(a) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(b) In the event the affected school districts are unable to reach an agreement pursuant to subdivision (a), the districts shall jointly submit the dispute to a three-member arbitration panel

composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

17624. (a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 17620 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995 of the Government Code.

17625. Notwithstanding any other law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b) Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehome for occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code, in the event that paragraph (1) does not apply.

(c) No fee or other requirement levied under Section 17620 shall be applied to any of the following:

(1) Any manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park on or before September 1, 1986, or on any date thereafter, if construction on that space, pursuant to a building permit, commenced on or before September 1, 1986.

(2) Any manufactured home or mobilehome located, installed, or occupied on any site outside of a mobilehome park on or before September 1, 1986, or on any date thereafter if construction on that site pursuant to a building permit commenced on or before September

1, 1986.

(3) The replacement of or addition to a manufactured home or mobilehome located, installed, or occupied on a space in a mobilehome park, subsequent to the original location, installation, or occupancy of any manufactured home or mobilehome on that space.

(4) The replacement of a manufactured home or mobilehome that was destroyed or damaged by fire or any form of natural disaster.

(5) A manufactured home or mobilehome accessory structure, as defined in Section 18008.5 or 18213 of the Health and Safety Code.

(6) The conversion of a rental mobilehome park to a subdivision, cooperative, or condominium for mobilehomes, or its conversion to any other form of resident ownership of the park, as described in Section 50561 of the Health and Safety Code.

(d) Where any fee or other requirement levied under Section 17620 is required as to any manufactured home or mobilehome that is subsequently replaced by a permanent residential structure constructed on the same lot, the amount of that fee or other requirement shall apply toward the payment of any fee or other requirement under Section 17620 applied to that permanent residential structure.

(e) Notwithstanding any other provision of law, any school district that, on or after January 1, 1987, collected any fee, charge, dedication, or other form of requirement from any manufactured home, mobilehome, mobilehome park, or other development, shall immediately repay the fee, charge, dedication, or other form of requirement to the person or persons who made the payment to the extent the fee, charge, dedication, or other form of requirement collected would not have been authorized under subdivision (a). This subdivision shall not apply, however, to the extent that, pursuant to Section 16 of Article I of the California Constitution, it would impair the obligation of any contract entered into by any school district, on or before the effective date of this section.

(f) For purposes of this section, "manufactured home," "mobilehome," and "mobilehome park" have the meanings set forth in Sections 18007, 18008, and 18214, respectively, of the Health and Safety Code.

(g) (1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36-month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or

interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

17626. (a) A fee, charge, dedication, or other requirement authorized under Section 17620, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7 of the Government Code, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995 of the Government Code, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995 of the Government Code.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

CHAPTER 7. ENERGY EFFICIENCY

17650. The Legislature finds and declares that it is in the interest of the state and of the people thereof for the state to aid school districts in finding cost-effective methods of conserving energy in school buildings maintained by the districts. The Legislature also finds that while many districts may desire to participate in energy conservation programs designed to reduce the steadily rising costs of meeting the energy needs of school buildings, that the costs involved in improving existing school facilities to become more energy efficient are often prohibitive.

It is the intent of the Legislature in enacting this chapter to encourage school districts to retrofit school buildings so as to conserve energy and reduce the costs of supplying energy.

17651. (a) School districts may borrow funds from federal or state regulated financial institutions for the purposes of design and construction costs associated with retrofitting school buildings to become more energy efficient. School districts shall only be authorized to borrow an amount which does not exceed that which can be repaid from energy cost avoidance savings accumulated from the improvement of school facilities.

(b) Any savings and loan association may make loans or advances of credit pursuant to subdivision (a) in an amount not in excess of 5 percent of its total assets. This investment may be in addition to any other investment savings and loan associations are permitted to undertake under Section 6705.7 of the Financial Code.

17652. To the extent that these services are available, school districts shall arrange for the preaudit and postaudit of school buildings by investor-owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions. The preaudit shall identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings. The postaudit shall be conducted upon completion of

the retrofitting of the school buildings to ensure that the project satisfies the recommendations of the preaudit.

17653. School districts taking action under this chapter shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to school districts by investor-owned or municipal utility companies or federal or state regulated financial institutions, school districts may utilize the services of these businesses.

SEC. 4. Part 10.5 (commencing with Section 17900) of the Education Code is repealed.

SEC. 5. Part 23 (commencing with Section 38000) is added to the Education Code, to read:

PART 23. SUPPLEMENTAL SERVICES

CHAPTER 1. SECURITY DEPARTMENTS

38000. (a) The governing board of any school district may establish a security department under the supervision of a chief of security or a police department under the supervision of a chief of police, as designated by, and under the direction of, the superintendent of the school district. In accordance with Chapter 5 (commencing with Section 45100) of Part 25, the governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. In addition, a school district may assign a school police reserve officer who is deputized pursuant to Section 35021.5 to a schoolsite to supplement the duties of school police personnel pursuant to this section. It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers.

(b) The governing board of a school district that establishes a security department or a police department shall set minimum qualifications of employment for the chief of security or chief of police, respectively, including, but not limited to, prior employment as a peace officer or completion of any peace officer training course approved by the Commission on Peace Officer Standards and Training. A chief of security or chief of police shall comply with the prior employment or training requirement set forth in this subdivision as of January 1, 1993, or a date one year subsequent to the initial employment of the chief of security or chief of police by the school district, whichever occurs later. This subdivision shall not be construed to require the employment by a school district of any additional personnel.

38001. Persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code.

38002. Moneys transferred into the general fund of any school district pursuant to Section 1463.12 of the Penal Code may be made available for the following purposes:

(a) The training of persons employed and compensated as members of a police department of a school district, pursuant to the requirements or approval of the Commission on Peace Officer Standards and Training.

(b) The training of persons employed and compensated as members of a police department of a school district in other public safety skills, including, but not limited to, all of the following:

(1) First aid.

(2) Rescue.

instructor certified pursuant to Section 38156 if either of those departments finds that the instructor's certificate would have been suspended, revoked, or canceled for any of the reasons designated in subdivision (e), (f), or (g).

38166. (a) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor with no instructional limitations shall conduct at least 20 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel and 10 hours of classroom training, which need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to either classroom or behind-the-wheel training only shall conduct at least 10 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel or classroom training depending on the limitation. The training need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to in-service training only shall conduct at least 10 hours of in-service training each 12 months. All school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle driver instructor training conducted by department staff may be accepted in lieu of the requirements of this subdivision.

(b) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor may be limited to classroom instruction, behind-the-wheel training or in-service training only, and prohibited from recording, documenting, or signing for any training required by this article, as determined by the department.

(c) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor shall be limited to behind-the-wheel instruction in vehicles that the instructor is qualified to drive.

(d) All school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

38167. The department may assess fees to any instructor applicant who will be training drivers of any vehicle as defined in Section 642 of the Vehicle Code. The fee shall not be more than necessary to offset the department's reasonable costs.

38168. Employers shall take all action necessary to make available to every transit busdriver required to be trained pursuant to Section 38158 or 38162 the opportunity to be trained without the loss of wages or benefits.

SEC. 6. Part 23 (commencing with Section 39001) of the Education Code is repealed.

SEC. 7. Section 53080 of the Government Code is repealed.

SEC. 8. Section 53080.1 of the Government Code is repealed.

SEC. 9. Section 53080.15 of the Government Code is repealed.

SEC. 10. Section 53080.2 of the Government Code is repealed.

SEC. 11. Section 53080.3 of the Government Code is repealed.

SEC. 12. Section 53080.4 of the Government Code is repealed.

SEC. 13. Section 53080.6 of the Government Code is repealed.

SEC. 14. Section 53081 of the Government Code is repealed.

SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the **1996** calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

BILL NUMBER: AB 3081 CHAPTERED 09/16/96

CHAPTER 549
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AMENDED IN SENATE JUNE 12, 1996
AMENDED IN ASSEMBLY MAY 16, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996

INTRODUCED BY Assembly Member Olberg

FEBRUARY 23, 1996

An act to amend Sections 66000 and 66020 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, Olberg. Real property: fees for development.

Existing law imposes various requirements with respect to fees exacted in connection with land development approvals by public agencies. Existing law defines the term "fee" as a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

This bill would revise that definition to state that a fee means a monetary exaction, other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

Existing law permits any party to protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by (a) making payment in full or ensuring performance of the necessary conditions, and (b) serving a notice containing specified information, including a statement that the required payment is tendered under protest.

This bill, instead, would require the party protesting the imposition of an exaction to make payment in full or provide satisfactory evidence of arrangements to pay the fee when due. The bill would require the statement to be revised to indicate that the required payment will be tendered under protest when due.

Under existing law, a protest filed against the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development is required to be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition thereof. Existing law also

provides that any party who files a protest pursuant to these provisions may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition.

This bill, instead, would require each local agency, with respect to a project for which the agency has elected to impose a fee, dedication, reservation, or other exaction, to provide to the project applicant a notice in writing at the time of the approval of the project, or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and a notification that the 90-day approval period in which the applicant may protest has begun. The bill also would provide that the 180-day period to file an action to attack, review, set aside, void, or annul fees, dedications, reservations, or other exactions imposed on a development by a local agency shall be filed within 180 days after the delivery of the notice required by these provisions.

This bill also would expand these protest provisions to apply not only to residential housing developments but to any project undertaken for the purpose of development, as defined under existing provisions of law.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services and community amenities.

SEC. 2. Section 66020 of the Government Code is amended to read:

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision

shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

BILL NUMBER: SB 1693 CHAPTERED 09/17/96

CHAPTER 569
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AMENDED IN SENATE APRIL 23, 1996
AMENDED IN SENATE APRIL 9, 1996

INTRODUCED BY Senator Monteith

FEBRUARY 21, 1996

An act to amend Sections 66001 and 66006 of, and to add Section 66008 to, the Government Code, relating to development.

LEGISLATIVE COUNSEL'S DIGEST

SB 1693, Monteith. Development: fees.

Existing law authorizes a local agency to charge a variety of fees in connection with the approval of a development project, as defined. Existing law prescribes the responsibilities of the local agency with respect to the fees collected, including requiring the local agency to make certain findings with respect to any portion of a fee that remains unexpended or uncommitted for 5 or more years after the deposit of the fee, and to refund unexpended or uncommitted fees under certain circumstances.

This bill would restrict the above responsibilities of the local agency to unexpended, rather than uncommitted fees. The bill would revise the local agency's duties with respect to these unexpended fees, including requiring the local agency, for the 5th fiscal year following the first deposit into an account or fund, and every 5 years thereafter, to include specified information in findings relating to the funding of a project. The bill would further provide that in the event that sufficient funds have been collected to complete financing on an incomplete public facility, the local agency either identify an approximate date by which the public facility will be commenced or refund, as specified, the unexpended portion of the fee to the then current record owner or owners of lots or units of the development project or projects on a prorated basis.

This bill would also specifically require a local agency to expend a fee for public improvements, as defined, solely and exclusively for the purpose or purposes for which the fee was collected, as specified. The bill would further provide that no fee shall be levied, collected, or imposed for general revenue purposes.

By revising the duties of a local agency with respect to the refund and expenditure of development fees, this bill would impose a state-mandated local program.

Existing law requires that, when fees charged against a development project are collected, a local agency deposit them in a

separate fund or account in a manner that will avoid the commingling of those fees with other funds. Existing law also requires that these fees be expended only for the purposes for which they were collected. Existing law further requires that, for each separate account or fund established under these provisions, the local agency make available to the public specified information relating to the fee, interest, other income, expenditures, and refunds occurring during the fiscal year within 60 days of the close of each fiscal year.

This bill would instead require the local agency, within 180 days after the last day of each fiscal year, to make available to the public specified information relating to fees deposited in the account or fund. The bill also would require the local agency to identify the public facility, or facilities, that the fee would be used to finance at the time the fee is imposed. These additional duties required of local agencies would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(1) Identify the purpose to which the fee is to be put.

(2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

SEC. 2. Section 66006 of the Government Code is amended to read:

66006. (a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the

purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b) (1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter

cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

SEC. 3. Section 66008 is added to the Government Code, to read:

66008. A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 1748 CHAPTERED 09/24/96

CHAPTER 799
FILED WITH SECRETARY OF STATE SEPTEMBER 24, 1996
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AMENDED IN ASSEMBLY MAY 6, 1996
AMENDED IN SENATE APRIL 11, 1996

INTRODUCED BY Committee on Housing and Land Use (Senators Sher (Chairman), Costa, Kopp, Marks, Monteith, and Watson)

FEBRUARY 22, 1996

An act to amend Section 42238 of the Education Code, to amend Sections 65009, 65040.3, 65352, 65920, and 66031 of, to amend and renumber Section 65302.9 of, to add Section 66000.5 to, and to repeal Sections 65035.1 and 65907 of, the Government Code, to amend Sections 18025.5, 18035.1, 18075.5, 18117, 18304, 19825, 33021, 33320.2, 33324, 33367, 33676, and 51622 of, to repeal Section 33030.5 of, and to repeal Article 4 (commencing with Section 33250) of Chapter 3 of Part 1 of Division 24 of, the Health and Safety Code, relating to the Housing and Land Use Omnibus Act of 1996.

LEGISLATIVE COUNSEL'S DIGEST

SB 1748, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1996.

Existing law generally regulates, pursuant to separate bodies of law, the areas of land use, housing and redevelopment.

This bill would enact the Housing and Land Use Omnibus Act of 1996 and would state legislative intent to combine several minor statutory changes relating to housing, land use and related topics into a single measure, and would make related findings and declarations.

This bill would designate specified provisions of existing law relating to imposition, adoption, and protest of various fees related to development as the Fee Mitigation Act. The bill would also designate a specific body of existing law as the Permit Streamlining Act.

Existing law relating to local planning provides that any city or county may adopt an ordinance or other regulation governing the issuance of permits for the use of property for occasional commercial filming, as specified.

This bill would specify that the legislative body of the city or county may perform the above function. In addition, the bill would relocate these provisions, to include them among the provisions of existing law relating to zoning.

Under existing law, any action brought in superior court relating to one of several land use related subjects may be subject to a mediation proceeding, as specified.

This bill would add to the potential mediation subjects specified actions relating to the Airport Land Use Commission.

Existing law relating to redevelopment provides that an unblighted

date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 6. Section 65907 of the Government Code is repealed.

SEC. 6.5. Section 65920 of the Government Code is amended to read:

65920. (a) This chapter shall be known and may be cited as the Permit Streamlining Act.

(b) Notwithstanding any other provision of law, the provisions of this chapter shall apply to all public agencies to the extent specified in this chapter, except that the time limits specified in Division 2 (commencing with Section 66410) of Title 7 shall not be extended by operation of this chapter.

SEC. 6.7. Section 66000.5 is added to the Government Code, to read:

66000.5. This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act.

SEC. 7. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or

agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 8. Section 18025.5 of the Health and Safety Code is amended to read:

18025.5. (a) Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), the department is authorized to assume responsibility for enforcement of manufactured home and mobilehome construction and safety standards relating to any issue with respect to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of California's plan for administration and enforcement of federal manufactured home and mobilehome safety and construction standards.

(b) The department is authorized to conduct inspections and investigations which it determines may be necessary to secure enforcement of this part and regulations adopted pursuant thereto. For the purposes of enforcement of this part and the related regulations, persons duly designated by the director of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) Enter, at any reasonable times and without advance notice, any factory, warehouse, sales lot, or establishment in which manufactured homes, mobilehomes, recreational vehicles, commercial coaches, or special purpose commercial coaches are manufactured, stored, held for sale, sold, or offered for sale, rent, or lease.

(2) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any factory, warehouse, sales lot, or establishment, and inspect the books, papers, records, and documents to ensure compliance with this part.

SEC. 9. Section 18035.1 of the Health and Safety Code is amended to read:

18035.1. (a) As a part of the documents executed for every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the dealer and purchaser shall sign a receipt for deposit, a copy of which shall be

allocated to the agency.

(e) As used in this section, "affected taxing agency" means and includes every public agency for the benefit of which a tax is levied upon property in the project area, whether levied by the public agency or on its behalf by another public agency.

(f) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) of Chapter 4 on or after January 1, 1977.

SEC. 20. Section 51622 of the Health and Safety Code is amended to read:

51622. (a) The agency may contract with any private person or public agency for review of the administration of this part and for assistance in implementing this part.

(b) The agency shall prepare a biennial report on the condition of the program of loan and bond insurance authorized by this part. The report of the evaluation shall include an evaluation of program effectiveness in relation to cost and shall include recommendations and suggested legislation for the improvement of the program, if any.

The agency shall obtain an annual audit of the insurance fund's books and accounts with respect to its activities under this part to be made at least once for each calendar year by an independent certified public accountant. A copy of the annual audit and biennial report shall be transmitted to the Governor, to the chairperson and vice-chairperson of the Senate and Assembly housing policy committees, the Senate and Assembly budget committees, and the Joint Legislative Budget Committee, and made available for review by interested parties no later than November 1 of each year for the annual audit, and November 1 biennially for the program evaluation report.

SEC. 21. No reimbursement is required by Section 12.5 of this act pursuant to Section 6 of Article XIIIB of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by Section 12 of this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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CHAPTER 772
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AMENDED IN ASSEMBLY APRIL 9, 1997

INTRODUCED BY Assembly Member Ortiz
(Principal coauthor: Assembly Member Ackerman)

FEBRUARY 27, 1997

An act to amend Section 467.5 of the Business and Professions Code, to amend Section 1775.10 of the Code of Civil Procedure, to amend and renumber the heading of Chapter 2 (commencing with Section 1150) of Division 9 of, to add Chapter 2 (commencing with Section 1115) to Division 9 of, and to repeal Sections 1152.5 and 1152.6 of, the Evidence Code, to amend Sections 66032 and 66033 of the Government Code, to amend Sections 10089.80 and 10089.82 of the Insurance Code, to amend Section 65 of the Labor Code, and to amend Section 350 of the Welfare and Institutions Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, Ortiz. Mediation.

(1) Under existing law, when a person consults a mediator or mediation service for the purpose of retaining mediation services, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence nor subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified. If the testimony of a mediator is sought to be compelled in any civil action or proceeding regarding anything said in the course of a mediation, the court is required to award reasonable attorney's fees and costs to the mediator against the person seeking the testimony. Existing law provides that a mediator may not file, and a court may not consider, any declaration or finding of any kind by the mediator, except as specified.

This bill would, among other things, revise and recast these provisions, as specified, define the terms "mediation," "mediator," and "mediation consultation," specify when a mediation ends, and make corresponding changes.

(2) Existing law provides that if an insured party and an insurer reach an agreement proposed during mediation, the insured will have 3 business days to rescind the agreement.

accordance with this section.

(5) For 10 calendar days, there is no communication between the mediator and any of the parties to the mediation relating to the dispute. The mediator and the parties may shorten or extend this time by agreement.

(b) For purposes of confidentiality under this chapter, if a mediation partially resolves a dispute, mediation ends when either of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that partially resolves the dispute.

(2) An oral agreement that partially resolves the dispute is reached in accordance with Section 1118.

(c) This section does not preclude a party from ending a mediation without reaching an agreement. This section does not otherwise affect the extent to which a party may terminate a mediation.

1126. Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this chapter before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

1127. If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing, as defined in Section 250, and the court or other adjudicative body determines that the testimony or writing is inadmissible under this chapter, or protected from disclosure under this chapter, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

1128. Any reference to a mediation during any subsequent trial is an irregularity in the proceedings of the trial for the purposes of Section 657 of the Code of Civil Procedure. Any reference to a mediation during any other subsequent noncriminal proceeding is grounds for vacating or modifying the decision in that proceeding, in whole or in part, and granting a new or further hearing on all or part of the issues, if the reference materially affected the substantial rights of the party requesting relief.

SEC. 4. The heading of Chapter 2 (commencing with Section 1150) of Division 9 of the Evidence Code is amended and renumbered to read:

CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES

SEC. 5. Section 1152.5 of the Evidence Code is repealed.

SEC. 6. Section 1152.6 of the Evidence Code is repealed.

SEC. 7. Section 66032 of the Government Code is amended to read:

66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to

this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for another 90-day period.

(e) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to any mediation conducted pursuant to this chapter.

SEC. 8. Section 66033 of the Government Code is amended to read:

66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

SEC. 9. Section 10089.80 of the Insurance Code is amended to read:

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The insured shall produce, to the extent available, all documents relevant to the degree of loss, value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(c) At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review. If the motion is not granted, the parent or guardian may offer evidence without first having reserved that right.

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CHAPTER 407
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AMENDED IN SENATE FEBRUARY 25, 1997

INTRODUCED BY Senator Greene and Assembly Members Villaraigosa and Olberg

(Principal coauthors: Senators Alpert, Johnston, Karnette, and Polanco)

(Principal coauthors: Assembly Members Aguiar, Baca, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Ducheny, Escutia, Frusetta, Gallegos, Havice, Hertzberg, Keeley, Kuehl, Kuykendall, Leonard, Mazzoni, Migden, Miller, Napolitano, Oller, Prenter, Richter, Scott, Shelley, Takasugi, Torlakson, Washington, Wayne, Wildman, and Woods)

(Coauthors: Assembly Members Figueroa, Knox, Perata, Strom-Martin, Vincent, and Wright)

DECEMBER 2, 1996

An act to amend Sections 17260, 17262, 17303, 17305, 17306, and 17620 of, to add Sections 17009.3, 17009.5, 81134, 81135, and 81136 to, to add Chapter 12.5 (commencing with Section 17070.10) to Part 10 of, to add Part 68 (commencing with Section 100400) to, to repeal Section 15101 of, and to repeal and add Section 17261 of, the Education Code, to amend Section 1003 of the Elections Code, to amend Sections 65995 and 65996 of, and to add Sections 4420.5, 65995.5, 65995.6, 65995.7, 65997, and 65998 to, the Government Code, and to add and repeal Chapter 9 (commencing with Section 51450) to Division 31 of the Health and Safety Code, relating to education facilities, making an appropriation therefor, and by providing the funds necessary therefor through an election for, and the issuance and sale of, bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, Greene. Education: Leroy F. Greene School Facilities Act of 1998: Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998: school facilities construction: developers fees.

SEC. 10. Section 17305 of the Education Code is amended to read:

17305. (a) Notwithstanding Section 14952 of the Government Code, the Department of General Services shall contract with a sufficient number of qualified plan review firms for assistance in performing the plan review required under this article or Article 5 (commencing with Section 17350).

(b) For purposes of this article, "qualified plan review firm" means an individual, firm, or the building official of a city, a county, or a city and county, as defined in Section 18949.27 of the Health and Safety Code or the authorized representative of the building official that is identified by the Department of General Services as having appropriate expertise and knowledge of the requirements that apply to school buildings under this article. The department shall establish and maintain a list of the individuals and firms, and building officials or the authorized representatives of building officials so identified, and shall make that list available, upon request, to school districts and other interested parties.

SEC. 11. Section 17306 of the Education Code is amended to read:

17306. (a) Upon submitting a complete application for review under this article, the applicant may request that the Department of General Services refer the documents necessary for the review of that application to a qualified plan review firm operating under contract with the department pursuant to Section 17305. The department immediately shall grant the request and refer the necessary documents to a qualified plan review firm if the applicant so requests.

Upon completing the review, the qualified plan review firm shall submit the documents referred to it for the review of the application, together with the results of its review, to the Department of General Services.

(b) The Department of General Services shall establish a procedure governing the use by applicants of the review process alternative described in this section, including, but not limited to, provisions restricting the use of qualified plan review firms on the basis of conflict of interest.

SEC. 12. Section 17620 of the Education Code is amended to read:

17620. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in

assessable space.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that
fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

SEC. 19. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial construction, thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting.

(c) (1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of

school facilities as a condition to the approval of residential construction, neither Section 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district' s ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g) (1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in

governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

SEC. 20. Section 65995.5 is added to the Government Code, to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for

capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, **1998**, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIIIA of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 52211) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, **1998**, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units

are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) A fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code or pursuant to Chapter 4.7 (commencing with Section 65970) shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobile homes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, **1998**, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed two times the amount funded by the State Allocation Board.

SEC. 21. Section 65995.6 is added to the Government Code, to read:

65995.6. (a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school

district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any

time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

SEC. 22. Section 65995.7 is added to the Government Code, to read:

65995.7. (a) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

SEC. 23. Section 65996 of the Government Code is amended to read:

65996. (a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

SEC. 24. Section 65997 is added to the Government Code, to read:

65997. (a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2) (A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

SEC. 25. Section 65998 is added to the Government Code, to read:

65998. (a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

SEC. 26. Chapter 9 (commencing with Section 51450) is added to Division 31 of the Health and Safety Code, to read:

CHAPTER 9. SCHOOL FACILITY FEE AFFORDABLE HOUSING ASSISTANCE

SEC. 31. Section 3, Section 12, and Section 18 to 28, inclusive, of this act shall not become operative before November 4, **1998**, and on that date shall become operative only if the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of **1998** is approved by the voters at the November 3, **1998**, statewide general election.

SEC. 32. If the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of **1998** is not approved by the voters at the November 3, **1998**, statewide general election, Section 17009.3 of the Education Code, as added by Section 2 of, and Chapter 12.5 (commencing with Section 17070.10) of Part 10 of the Education Code, as added by Section 4 of, this act shall become inoperative on November 4, **1998**.

SEC. 33. Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, and 9082 of the Elections Code or any other provision of law, the Secretary of State shall submit Section 16 of this act to the voters at the November 3, **1998**, statewide general election.

SEC. 34. Notwithstanding Section 13115 of the Elections Code, Section 16 of this act shall be placed first on the ballot for the November 3, **1998**, statewide general election, and shall be designated as Proposition 1A.

SEC. 35. Notwithstanding Section 13282 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title regarding the measure set forth in Section 16 of this act for not more than eight days, and the financial impact statement from the time it is received by the Secretary of State until the end of the eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot title, or portion thereof, to be amended or deleted only within that eight-day period.

SEC. 36. The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the bond act contained in Section 16 of this act. If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall be mailed separately.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate school facilities to house the growing pupil population attending the California schools, to facilitate class size reduction, to renovate existing facilities, to provide for joint-use facilities, and to provide adequate higher education facilities to accommodate the growing number of students, it is necessary that this act take effect immediately.

HOUSING AND LAND USE OMNIBUS ACT

CHAPTER 689

S.B. No. 1362

AN ACT to amend Section 17621 of the Education Code, to amend Sections 7260, 65039, 65850, 65860, 65915, 66007, 66021, 66452.6, 66477, and 66498.5 of, to add Sections 65850.3 and 66413.5 to, and to repeal Section 65587.1 of, the Government Code, to amend Sections 18035.3, 18062.2, and 18070.5 of, to amend and repeal Section 17959.3 of, to add and repeal Section 50710.2 of, and to repeal Section 18202 of, the Health and Safety Code, and to amend Section 423.3 of the Revenue and Taxation Code, relating to housing and land use.

[Approved by Governor September 21, 1998.]

[Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1998.

(1) Existing law generally regulates land use, housing, and redevelopment.

This bill would enact the Housing and Land Use Omnibus Act of 1998 and would state legislative intent to combine several minor statutory changes relating to housing, land use, and related topics into a single measure, and would make related findings and declarations.

(2) Existing law, known as the Relocation Assistance Act, requires a public entity to provide compensation and advisory services to any person, business, or farm operation that is displaced because of the acquisition of real property for public use. Existing law governs the provision of relocation assistance, including benefits for displaced persons, as defined. For purposes of that definition and for purposes of the act, a tenant in a multifamily rental project of 4 or more units who is temporarily displaced for not more than 180 days as part of a rehabilitation of that project is not deemed a "displaced person" if, among other conditions, other financial benefits and services are provided, including relocation to a comparable replacement unit, and the resident is offered the right to return to his or her original unit, with prescribed rent for the first 12 months subsequent to that return.

This bill would, if SB 1156 is chaptered and becomes effective on or before January 1, 1999, delete those provisions from that definition of "displaced person."

(3) Existing law authorizes the Governor to appoint the Director of Planning and Research at a salary not to exceed $27,500 annually, and authorizes the Governor to appoint and fix the salaries of necessary assistants and other personnel at annual amounts that generally may not exceed $85,402.

This bill would require the salary of the director to be fixed pursuant to those provisions authorizing the Governor to appoint and fix the salaries of necessary assistants and other personnel.

(4) Existing law provides that certain mortgage revenue bond programs or local approval of a housing-related project prior to May 1, 1983, shall not be invalidated because a city and county failed to comply with specified requirements.

This bill would repeal that provision.

(5) Existing law requires that an action or proceeding to enforce compliance with a requirement that a zoning ordinance be consistent with a general plan be taken within 90 days of the enactment or amendment of the ordinance.

This bill would require the action or proceeding to be commenced and service made on the legislative body within 90 days.

own operating costs by reducing the number of separate bills affecting housing, land use, and related topics. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to housing, land use, and related topics into a single measure.

SEC. 1.3. Section 17621 of the Education Code is amended to read:

17621. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code * * *. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 1.4. Section 7260 of the Government Code is amended to read:

7260. As used in this chapter:

(a) "Public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property, or any interest therein, in any city or county for public use and any person who has the authority to acquire property by eminent domain under state law.

(b) "Person" means any individual, partnership, corporation, limited liability company, or association.

(c)(1) "Displaced person" means both of the following:

(A) Any person who moves from real property, or who moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with or acting on behalf of a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent. For purposes of this subparagraph, "residential tenant" includes any occupant of a residential hotel unit, as defined in subdivision (b) of Section 50669 of the Health and Safety Code, and any occupant of employee housing, as defined in Section 17008 of the Health and Safety Code, but does not include any person who has been determined to be in unlawful occupancy of the displacement dwelling.

(B) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

(2) The definition contained in this subdivision shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use. Except persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing that was made available to them on a permanent basis by a public

(g) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For purposes of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(h) For purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county which result in identifiable cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(i) If a developer agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

SEC. 6.5. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c)(1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within

the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

SEC. 7. Section 66021 of the Government Code is amended to read:

66021. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest * * * the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction * * * as provided in Section * * * 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

SEC. 7.5. Section 66413.5 is added to the Government Code, to read:

66413.5. (a) When any area in a subdivision or proposed subdivision as to which a tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map if it meets all of the conditions of the tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), and other requirements of this division.

(b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and give effect to the vesting tentative map as provided in Chapter 4.5 (commencing with Section 66498.1), if the final map meets all of the conditions of the vesting tentative map and meets the requirements and conditions for approval of final maps as provided in Article 4 (commencing with Section 66456), Chapter 4.5 (commencing with Section 66498.1), and other requirements of this division.

(c) Land specified in subdivision (b) of Section 16142 of the Government Code shall be assessed at the value determined as provided in Section 423, but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

(d) Waterfowl habitat shall be assessed at the value determined as provided in Section 423.7 but not to exceed a uniformly applied percentage of its base year value pursuant to Section 110.1, adjusted to reflect the percentage change in the cost of living not to exceed 2 percent per year. In no event shall that percentage be less than 90 percent.

SEC. 17. Section 1.4 of this act shall become operative only if Senate Bill 1156 is chaptered and becomes effective on or before January 1, 1999.

SEC. 18. If Assembly Bill 2055 is chaptered and becomes effective on or before January 1, 1999, Sections 3 and 4 of this act shall not become operative.

3660

SCHOOLS AND SCHOOL DISTRICTS—CONSTRUCTION FEES WITHIN DISTRICT—EXCLUSION FOR ACCESSIBILITY MODIFICATIONS

CHAPTER 300

A.B. No. 847

AN ACT to amend Section 17620 of the Education Code, relating to schools.

[Filed with Secretary of State September 2, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 847, Campbell. School impact fees: exemption: disabled persons.

Existing law generally authorizes the governing board of a school district to levy a fee, charge, dedication, or other requirement upon construction undertaken within the boundaries of the district for the purpose of funding the construction or reconstruction of school facilities. Existing law subjects to this authority residential construction, other than new residential construction, if the resulting increase in assessable space exceeds 500 square feet.

This bill would establish an exemption from this application of authority for new construction that qualifies for a specified exclusion from property tax reappraisal for construction, or an installation or modification, that makes a dwelling more accessible to a severely and permanently disabled person.

The people of the State of California do enact as follows:

SECTION 1. Section 17620 of the Education Code is amended to read:

17620. (a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of

the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C)(i) Except at otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has

been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

SCHOOLS AND SCHOOL DISTRICTS—FACILITIES—CONSTRUCTION

CHAPTER 858

A.B. No. 695

AN ACT to amend Sections 15340, 17009.5, 17070.15, 17070.75, 17071.10, 17071.25, 17071.75, 17072.10, 17072.20, 17074.10, 17076.10, and 100420 of, to add Section 17072.17 to, and to repeal Section 15341 of, the Education Code, to amend Section 1003 of the Elections Code, and to amend Sections 65995.5 and 65995.6 of the Government Code, relating to school facilities.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 695, Mazzoni. School facilities: construction and modernization.

Existing law, the Leroy F. Greene School Facilities Act of 1998, (the Greene Act of 1998) establishes a program in which the State Allocation Board is required to provide state per-pupil funding, including hardship funding, for new school facilities construction and school facilities modernization to applicant school districts, as defined, and requires applicants to provide local matching funds.

This bill would authorize the board to adopt or amend regulations on or after January 1, 2000, to adjust the assumed capacity for each teaching station used for nonsevere or severe special day class purposes after considering the recommendations of the Legislative Analyst required pursuant to existing law, which would be implemented upon approval of the Director of Finance.

This bill would authorize the board to adopt, on or after January 1, 2001, regulations establishing assumed capacity standards, after consideration of recommendations developed by the Director of Finance, for continuation high school, community day school, county

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e)(1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision.

SEC. 15. Section 1003 of the Elections Code is amended to read:

1003. This chapter shall not apply to the following:

(a) Any special election called by the Governor.

(b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with this chapter.

(c) School governing board elections consolidated pursuant to Section 5006 of the Education Code or initiated by petition pursuant to Section 5091 of the Education Code.

(d) Elections of any kind required or permitted to be held by a school district located in a chartered city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population.

(e) County, municipal, district, and school district initiative, referendum, or recall elections.

(f) Any election conducted solely by mailed ballot pursuant to Division 4 (commencing with Section 4000).

(g) Elections held pursuant to Article 1 (commencing with Section 15100) of Chapter 1, or pursuant to Article 4 (commencing with Section 15340) of Chapter 2 of, Part 10 of the Education Code.

SEC. 16. Section 65995.5 of the Government Code is amended to read:

65995.5. (a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) * * * Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code * * *, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed * * * the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

SEC. 17. Section 65995.6 of the Government Code is amended to read:

65995.6. (a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to

projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or

any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

SEC. 18. The Legislature finds and declares that the modifications to the Class Size Reduction Kindergarten–University Public Education Facilities Bond Act of 1998 made by this act further the purposes of, and are consistent with, that act.

4902

CODE MAINTENANCE—GENERAL AMENDMENTS

CHAPTER 135

A.B. No. 2539

AN ACT to amend Sections 651, 680, 4112, 4982, 4998, 4998.2, 4998.5, 4998.6, 6086.65, and 17537.11 of the Business and Professions Code, to amend Sections 1102.2, 1103, and 2924c of the Civil Code, to amend Sections 131.4, 703.140, and 704.115 of the Code of Civil Procedure, amend Sections

[5] Water Code App. § 117–4.2.

[6] Water Code App. § 117–4.3.

(m) "State act" means the Carpenter–Presley–Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 32. Section 17284.5 of the Education Code is amended to read:

17284.5. * * * Notwithstanding any provision of law to the contrary, any waiver granted by the State Allocation Board to a school district for use of a nonconforming existing private building acquired for conversion for use as a school building, that had not expired prior to January 1, 2000, is hereby extended until January 1, 2001, if the work to make the building a conforming structure commenced prior to January 1, 2000, but had not been completed by that date.

SEC. 33. Section 17620 of the Education Code is amended to read:

17620. (a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C)(i) Except as otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Govern-

ment Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

SEC. 34. Section 23812 of the Education Code is amended to read:

23812. (a) The surviving spouse of a deceased member who previously lost entitlement to benefits prescribed by this part due to remarriage shall be entitled to resume payment of the benefits effective either on January 1, 2000, or the first day of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the benefits payable shall be calculated as though the benefits had been paid without interruption from the date of remarriage through the benefits resumption effective date.

(b) The board shall be under no requirement to identify, locate, or notify a remarried spouse of a deceased member who previously lost entitlement as a result of remarriage about the resumption of benefits provided in this section. The board shall be under no requirement to provide the name or address or any other information concerning any remarried spouse of a deceased member to any person, agency, or entity for the purpose of notifying those who may be eligible for the resumption of benefits under this section.

(c) Nothing in this section shall be construed to imply or interpreted to mean that the benefits addressed shall be required to be paid retroactively.

SEC. 35. Section 24255 of the Education Code is amended to read:

24255. (a) There is in the State Treasury a trust fund to be known as the Teachers' Replacement Benefits Program Fund. There shall be deposited directly in that fund, and not transferred from the Teachers' Retirement Fund, that portion of employer contributions determined by the board as necessary to fund the replacement benefits program.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the Teachers' Replacement Benefits Program Fund are continuously appropriated without regard to fiscal years to pay benefits to members and beneficiaries of the defined benefit program, and to pay related administrative expenses.

For purposes of performing these calculations, the Controller shall review the information submitted by the county. If, consistent with information available from any other reliable source, the Controller determines that the information may be inaccurate, the Controller may request the Director of Finance to review the amount reported by the county in accordance with paragraph (1) of subdivision (a). The Director of Finance may direct the Controller to adjust the amount reported to the Controller by the county in accordance with paragraph (1) of subdivision (a). The Controller shall inform the county of any adjustment that is so made.

(2) No later than February 1, 2000, the Controller shall, from the appropriated revenues subject to this section, allocate to the county the amount determined for that county pursuant to paragraph (1).

(c) In each county that receives revenue in accordance with subdivision (b), the county auditor shall allocate that revenue to those local agencies among the county, and cities and special districts in the county, that contributed a positive amount to the county's Educational Revenue Augmentation Fund for the 1998–99 fiscal year. The allocation share for each recipient local agency shall be determined pursuant to the following calculations:

(1) Divide the amount of revenue shifted for the 1998–99 fiscal year from the local agency to the county's Educational Revenue Augmentation Fund by the total amount of revenue shifted for the 1998–99 fiscal year to the county's Educational Revenue Augmentation Fund by all local agencies in the county contributing a positive amount to that fund.

(2) Multiply the ratio determined pursuant to paragraph (1) by the amount of revenues allocated to the county pursuant to paragraph (2) of subdivision (b).

SEC. 176. Any section of any act enacted by the Legislature during the 2000 calendar year that takes effect on or before January 1, 2001, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2000 calendar year and takes effect on or before January 1, 2001, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

EDUCATION—KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT

CHAPTER 33

A.B. No. 16

AN ACT to amend Sections 17070.15, 17070.35, 17070.40, 17070.43, 17070.51, 17070.65, 17070.70, 17071.33, 17071.75, 17072.10, 17072.25, 17074.10, 17074.15, 17075.10, 17075.15, 17076.10, 17088.2, 17262, and 17280 of, to add Sections 17070.95, 17074.16, 17074.26, 17077.35, 17251.5, and 17280.5 to, to amend and renumber Section 17077.10 of, to amend and renumber the heading of Article 10 (commencing with Section 17077.10) of Chapter 12.5 of Part 10 of, to add Article 10.6

Additions or changes indicated by underline; deletions by asterisks * * * 239

seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100950. All money deposited in the 2004 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100955. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100960. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

100970. This chapter shall only become operative upon approval of the voters pursuant to subdivision (c) of Section 35 of the act adding this chapter.

SEC. 32. Section 15490 of the Government Code is amended to read:

15490. (a) There is in the state government the State Allocation Board, consisting of the Director of Finance, the Director of General Services, a person appointed by Governor, and the Superintendent of Public Instruction. * * * The board shall also include three Members of the Senate appointed by the Senate Committee on Rules, * * * two of whom shall belong to the majority party and one of whom shall belong to the minority party, and three Members of the Assembly appointed by the Speaker * * * of the Assembly, two of whom shall belong to the majority party and one of whom shall belong to the minority party.

(b) The members of the board and the Members of the Legislature meeting with the board shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties.

(c) The Director of General Services shall provide assistance to the board as the board requires. The board may, by a majority vote of all members, do one or more of the following:

(1) Appoint an employee to report directly to the board as assistant executive officer.

(2) Fix the salary and other compensation of the assistant executive officer.

(3) Employ additional staff members, and secure office space and furnishings, as necessary to support the assistant executive officer in the performance of his or her duties.

SEC. 33. Section 65995.7 of the Government Code is amended to read:

65995.7. (a)(1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house. For the purposes of making this determination, the board shall not consider whether

funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

SEC. 33.2. Section 51451.5 is added to the Health and Safety Code, to read:

51451.5. The Homebuyer Down Payment Assistance Program of 2002 is hereby established, to provide assistance in the amount of the applicable school facility fee on affordable housing developments. The Homebuyer Down Payment Assistance Program of 2002 shall, with funds provided by the Housing and Emergency Shelter Trust Fund Act of 2002 (Part 11 (commencing with with Section 53500)), provide the following assistance:

(a) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in an economically distressed area in the amount of school facility fees paid pursuant to Section 65995.5 or 65995.7 of the Government Code, less the amount that would be required pursuant to subdivision (b) of Section 65995 of the Government Code, notwithstanding Sections 65995.5 and 65995.7 of the Government Code, if all of the following conditions are met:

(1) The development project is located in a county with an unemployment rate that equals or exceeds 125 percent of the state unemployment rate.

(2) Five hundred or more residential structures have been constructed in the county during 2001.

(3) A building permit for an eligible residential structure in the development project is issued by the local agency on or after January 1, 2002.

(4) The eligible residential structure is to be owner occupied for at least five years. If a structure is owner occupied for fewer than five years, the recipient of the assistance shall repay the School Facilities Fee Assistance Fund the amount of the assistance, on a prorated basis.

(5) The sales price of the eligible residential structure does not exceed 175 percent of the median sales price of residential structures in the county during the average of the previous five years.

(b) Downpayment assistance to the purchaser of any newly constructed residential structure in a development project in the aggregate amount of school facility fees paid pursuant to one, all, or any combination of subdivision (b) of Section 65995, Section 65995.5, or Section 65995.7 of the Government Code for the eligible residential structure if all of the following conditions are met:

(1) The assistance is provided to a qualified first-time home buyer pursuant to Section 50068.5.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate school facilities to house the growing pupil population attending the California schools, to renovate existing facilities, to provide for the wiring and cabling of schools for education technology, to provide for joint-use facilities, and to provide adequate higher education facilities to accommodate the growing number of students, it is necessary that this act take effect immediately.

STATE AGENCIES—INFRASTRUCTURE—FUNDS

CHAPTER 1016

A.B. No. 857

AN ACT to amend Sections 13102, 13103, 65041, 65042, 65048, 65049, and 66037 of, and to add Sections 65041.1 and 65404 to, the Government Code, relating to state planning.

[Filed with Secretary of State September 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 857, Wiggins. Infrastructure planning: priorities and funding.

(1) Existing law requires the Governor, in conjunction with the Governor's Budget, to submit annually to the Legislature a proposed 5–year infrastructure plan containing specified information concerning infrastructure needed by state agencies, schools, and postsecondary educational institutions and a proposal for funding the needed infrastructure.

This bill would clarify the information that is required to be included in a proposal for funding state infrastructure identified in the 5–year plan.

(2) Existing law requires the Governor to prepare and cause to be maintained, reviewed, and revised a comprehensive State Environmental Goals and Policy Report.

SEC. 7. Section 65049 of the Government Code is amended to read:

65049. Following approval of the State Environmental Goals and Policy Report as provided in Section 65046, the report shall serve as a guide for state expenditures * * *. In transmitting the annual budget to the Legislature, information shall be included relating proposed * * * expenditures to the achievement of statewide goals and objectives set forth in the report.

SEC. 8. Section 65404 is added to the Government Code, to read:

65404. (a) On or before January 1, 2005, the Governor shall develop conflict resolution processes to do all of the following:

(1) Resolve conflicting requirements of two or more state agencies for a local plan, permit, or development project.

(2) Resolve conflicts between state functional plans.

(3) Resolve conflicts between state infrastructure projects.

(b) The conflict resolution process may be requested by a local agency, project applicant, or one or more state agencies.

SEC. 9. Section 66037 of the Government Code is amended to read:

66037. No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

Exhibit 3
Copies of Code Sections Cited

§ 17620. Levies against development projects by school districts

(a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of commercial or industrial construction shall not be deemed to include the square footage of any structure existing on the site of that construction as of the date the first building permit is issued for any portion of that construction.

(B) To new residential construction.

(C)(i) Except as otherwise provided in clause (ii), to other residential construction, only if the resulting increase in assessable space exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total resulting increase in assessable space.

(ii) This subparagraph does not authorize the imposition of a levy, charge, dedication, or other requirement against residential construction, regardless of the resulting increase in assessable space, if that construction qualifies for the

exclusion set forth in subdivision (a) of Section 74.3 of the Revenue and Taxation Code.

(D) To location, installation, or occupancy of manufactured homes and mobilehomes, as defined in Section 17625.

(2) For purposes of this section, "construction" and "assessable space" have the same meaning as defined in Section 65995 of the Government Code.

(3) For purposes of this section and Section 65995, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 17582.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential construction within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that residential construction.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.

(b) A city or county, whether general law or chartered, may not issue a building permit for any construction absent certification by the appropriate school district that any fee, charge, dedication, or other requirement levied by

the governing board of that school district has been complied with, or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the construction. The school district shall issue the certification immediately upon compliance with the fee, charge, dedication, or other requirement.

(c) If, pursuant to subdivision (c) of Section 17621, the governing board specifies that the fee, charge, dedication, or other requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, a city or county, whether general law or chartered, may not conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential construction absent certification by the appropriate school district of compliance by that residential construction with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 17621.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.1998, c. 407 (S.B.50), § 12, eff. Aug. 27, 1998, operative Nov. 4, 1998; Stats.1999, c. 300 (A.B.847), § 1; Stats.2000, c. 135 (A.B.2539), § 33.)

§ 17621. Procedures for adoption or increase of levy; protest

(a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007 of the Government Code.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 17620 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66020 of the Government Code, except that the procedures set forth in Section 66021 of the Government Code are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001 of the Government Code, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are calculated on either an individual project or categorical basis, in accordance with subparagraph (A). Those employee generation estimates shall be based upon commercial and industrial factors within the district or upon, in whole or in part, the applicable employee generation estimates set forth in the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments.

(C) The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998. Amended by Stats.1998, c. 689 (S.B.1362), § 1.3.)

§ 17622. School districts; levies on enclosed agricultural space

(a) No fee, charge, dedication, or other requirement may be levied by any school district pursuant to Section 17620 upon any greenhouse or other space that is covered or enclosed for agricultural purposes, unless and until the district first complies with subdivisions (b) and (c).

(b) The school district governing board shall make a finding, supported by substantial evidence, of both of the following:

(1) The amount of the proposed fees or other requirements and the location of the land, if any, to be dedicated, bear a reasonable relationship and are limited to the needs of the community for elementary or high school facilities caused by the development.

(2) The amount of the proposed fees or other requirements does not exceed the estimated reasonable cost of providing for the construction or reconstruction of the school facilities necessitated by the development projects from which the fees or other requirements are to be collected.

(c) In determining the amount of the fees or other requirements, if any, to be levied on the development of any structure as described in subdivision (a), the school district governing board shall consider the relationship between the proposed increase in the number of employees, if any, the size and specific use of the structure, and the cost of the construction. No fee, charge, dedication, or other form of requirement, as authorized under Section 17620, shall be applied to the development of any structure described in subdivision (a) where the governing board finds either that the number of employees is not increased as a result of that development, or that housing has been provided for those employees, to the extent of any increase, by their employer, against which housing a fee, charge, or dedication, or other form of requirement has been applied under Section 17620. In developing the finding described in this section, the governing board shall consult with the county agricultural commissioner or the county director of the cooperative extension service.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17623. Distribution of fee levied by two nonunified school districts with common territorial jurisdiction

In the event the fee authorized pursuant to Section 17620 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995 of the Government Code, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(a) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(b) In the event the affected school districts are unable to reach an agreement pursuant to subdivision (a), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17624. Repayment of levy on development project without commencement of construction

(a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 17620 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17625. Levies against manufactured home or mobilehome by school districts

Notwithstanding any other law, any fee, charge, dedication, or other form of requirement levied by the governing board of a school district under Section 17620 may apply, as to any manufactured home or mobilehome, only pursuant to compliance with all of the following conditions:

(1) The fee, charge, dedication, or other form of requirement is applied to the initial location, installation, or occupancy of the manufactured home or mobilehome within the school district.

(2) The manufactured home or mobilehome is to be located, installed, or occupied on a space or site on which no other manufactured home or mobilehome was previously located, installed, or occupied.

(3) The manufactured home or mobilehome is to be located, installed, or occupied on a space in a mobilehome park, or on any site or in any development outside a mobilehome park, on which the construction of the pad or foundation system commenced after September 1, 1986.

(b)[1] Compliance on the part of any manufactured home or mobilehome with any fee, charge, dedication, or other form of requirement, as described in subdivision (a), or certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow, where the manufactured home or mobilehome is to be located, installed, or occupied on a mobilehome park space, or on any site or in any development outside a mobilehome park, as described in subdivision (a), and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(g)(1) Whenever a manufactured home or a mobilehome owned by a person 55 years of age or older who is also a member of a lower income household as defined by Section 50079.5 of the Health and Safety Code, and which has been moved from a mobilehome park space located in one school district, where the mobilehome owner has resided, to a space or lot located in a mobilehome park or a subdivision, cooperative, or condominium for mobilehomes or manufactured homes located in another school district, is subject to any fee or other requirement under Section 17620, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, the district in which the manufactured home or mobilehome has been newly located may waive the fee or other requirement under Section 53080, this section, and Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code, or otherwise shall be required to grant the homeowner the necessary approval for occupancy of the home, and permission to pay the amount of the fee or other requirement thereafter, in installments, over a period totaling no less than 36 months. A school district may require that the installments be paid monthly, quarterly, or every six months during the 36–month period, and that the fee be secured as a lien perfected against the mobilehome or manufactured home pursuant to Section 18080.7 of the Health and Safety Code.

(2) Costs of filing the lien and reasonable late charges or interest may be added to the amount of the lien. This subdivision does not apply where a school facilities fee, charge, or other requirement is imposed pursuant to Section 65995.2 of the Government Code.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 17626. Application of levy to reconstruction after damage or destruction by disaster

(a) A fee, charge, dedication, or other requirement authorized under Section 17620, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7 of the Government Code, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995 of the Government Code, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995 of the Government Code.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

§ 65970. Legislative findings and declaration

The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

§ 65971. Findings by school district; notice to city or county; mitigation measures

(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 1; Stats.1985, c. 1498, § 1.5; Stats.1994, c. 1228 (S.B.1735), § 6.)

§ 65972. Findings by city council or board of supervisors

Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

(1) That an ordinance pursuant to Section 65974 has been adopted, or

(2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

§ 65973. Definitions

As used in this chapter the following terms means [1]:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 2; Stats.1985, c. 1498, § 2.5.)

§ 65974. Land or fees for interim classroom facilities where overcrowding exists; conditional approval of residential development; developer fees under school facilities master plans

(a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the estab-

lishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1979, c. 282, p. 1023, § 53, eff. July 24, 1979; Stats.1982, c. 923, § 3, eff. Sept. 13, 1982; Stats.1985, c. 150, § 1; Stats.1985, c. 1498, § 3; Stats.1986, c. 887, § 10; Stats.1994, c. 1228 (S.B.1735), § 7.)

§ 65974.5. Expenditure of funds for construction or reconstruction purposes

Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

(Added by Stats.1989, c. 1209, § 24, eff. Oct. 1, 1989.)

§ 65975. Interim facility fees; fair market value of dedicated land; use for capital outlay project payments

(a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed.C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed.C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

(Added by Stats.1983, c. 1254, § 5.)

§ 65976. Schedule by school district; solution of conditions of overcrowding; contents; modifications

As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 3; Stats.1985, c. 1498, § 4.5.)

§ 65977. Agreement with two separate school districts; distribution of revenues

Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

§ 65978. Fees; separate accounting; reports

Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1981, c. 201, § 1; Stats.1984, c. 1062, § 1.)

§ 65979. Receipt of apportionment pursuant to building lease-purchase law; fee or dedication; determination of overcrowding

(a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code) [1] for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

(Added by Stats.1979, c. 282, p. 1024, § 54, eff. July 24, 1979. Amended by Stats.1980, c. 1354, p. 4883, § 62.5, eff. Sept. 30, 1980; Stats.1985, c. 1498, § 5; Stats.1986, c. 136, § 1.)

§ 65980. Definitions

For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

(Added by Stats.1979, c. 282, p. 1024, § 55, eff. July 24, 1979. Amended by Stats.1980, c. 1354, p. 4884, § 62.6, eff. Sept. 30, 1980; Stats.1985, c. 1498, § 6.)

§ 65981. Recommendation of fees to provide interim facilities; submission to city or county; failure to provide as waiver

If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

(Added by Stats.1979, c. 282, p. 1024, § 56, eff. July 24, 1979.)

(a) Except for a fee, charge, dedication, or other requirement authorized under Section * * * 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement * * * for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) * * * Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section * * * 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents ($1.93) per square foot of assessable space * * *. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial * * * construction, thirty-one cents ($0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall

be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. * * *

(c)(1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential construction, neither Section * * * 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

* * * Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement * * * exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of * * * this chapter, "* * * construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the * * * financing of school facilities * * * and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of * * * requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures * * *, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be

required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

* * *

(g)(1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

(Amended by Stats.1998, c. 407 (S.B.50), § 19, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 65995.1. Senior citizen and migrant worker housing; conversions; approval

(a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a) or (b).

(Added by Stats.1988, c. 29, § 4, eff. March 14, 1988. Amended by Stats.1989, c. 1209, § 26, eff. Oct. 1, 1989; Stats.1990, c. 633 (A.B.530), § 3, eff. Sept. 11, 1990; Stats.1991, c. 536 (S.B.1095), § 1, eff. Oct. 7, 1991.)

§ 65995.2. Manufactured home or mobilehome located within park or subdivision limited to older persons; changes in age limit; fees and other requirements

(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

(Added by Stats.1989, c. 1209, § 27, eff. Oct. 1, 1989.)

§ 65995.5. Alternative calculation of amounts

(a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

§ 65995.5. Alternative calculation of amounts

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) * * * Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code * * *, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed * * * the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

(Added by Stats.1998, c. 407 (S.B.50), § 20, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 16.)

§ 65995.6. School facilities needs analysis

(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

(Added by Stats.1998, c. 407 (S.B.50), § 21, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 17.)

§ 65995.7. State funds unavailable; supplemental amounts authorized

(a)(1) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house. For the purposes of making this determination, the board shall not consider whether funds are available for, or whether it is making preliminary apportionments or final apportionments pursuant to, Article 11 (commencing with Section 17078.10).

(2) Paragraph (1) shall become inoperative commencing on the effective date of the measure that amended this section to add this paragraph, and shall remain inoperative through the earlier of either of the following:

(A) November 5, 2002, if the voters reject the Kindergarten University Public Education Facilities Bond Act of 2002, after which date paragraph (1) shall again become operative.

(B) The date of the 2004 direct primary election after which date paragraph (1) shall again become operative.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

(Added by Stats.1998, c. 407 (S.B.50), § 22, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.2002, c. 33 (A.B.16), § 33.)

§ 65996. Conditions for approval of development projects; adequacy of school facilities; mitigating environmental effects

(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating * * * impacts on school facilities * * * that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section * * * 56021 or 56073:

* * *

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 * * *.

(b) * * * The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code * * *, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative * * * during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

(Amended by Stats.1998, c. 407 (S.B.50), § 23, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 65997. Exclusive methods of mitigating environmental effects related to adequacy of school facilities

(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c)(1) This section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2)(A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

(Added by Stats.1998, c. 407 (S.B.50), § 24, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 65998. Scope of chapter

(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

(Added by Stats.1998, c. 407 (S.B.50), § 25, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

§ 66001. Fee as condition of approval; agency requirements

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

(1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(1) Identify the purpose to which the fee is to be put.

(2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 8; Stats.1996, c. 569 (S.B.1693), § 1.)

§ 66002. Capital improvement plan; adoption; updates; hearings

(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

(1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987–88 Regular Session is enacted and becomes effective on or before January 1, 1988.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989.)

§ 66003. Reimbursement agreements; inapplicability of §§ 66001 and 66002; operative date of chapter

Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 9; Stats.1989, c. 170, § 2.)

§ 66004. Establishment or increase of fees; applicable requirements

The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

(Added by Stats.1988, c. 418, § 10. Amended by Stats.1990, c. 1572 (A.B.3228), § 15.)

§ 66005. Limitation on imposition of fees or exactions as condition of approval

(a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

(Formerly § 65959, added by Stats.1986, c. 1203, § 3. Renumbered § 66005 and amended by Stats.1988, c. 418, § 6.)

§ 66006. Local agency improvement fees; public availability of account or fund information

(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

(Formerly § 53077, added by Stats.1983, c. 921, § 1. Amended by Stats.1987, c. 1002, § 1. Renumbered § 66006 and amended by Stats.1988, c. 418, § 2; Stats.1988, c. 926, § 1. Amended by Stats.1989, c. 170, § 3; Stats.1992, c. 169 (A.B.2953), § 1; Stats. 1996, c. 569 (S.B.1693), § 2.)

§ 66007. Construction of public improvements or facilities; payment of fees or charges; residential development; time; definitions

(a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c)(1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

(Amended by Stats.1998, c. 689 (S.B.1362), § 6.5.)

§ 66008. Expenditures; authorized purposes

A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

(Added by Stats.1996, c. 569 (S.B.1693), § 3.)

§ 66016. Local agency fees; new fees and increases; procedures

(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20. Amended by Stats.1992, c. 487 (A.B.2567), § 1; Stats.1995, c. 657 (S.B.647), § 1; Stats.1995, c. 686 (S.B.660), § 6.5, eff. Oct. 10, 1995, operative Jan. 1, 1996.)

§ 66017. Development projects; adoption or increase of fees and charges

(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner that[1] 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

§ 66018. Hearing

(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

§ 66018.5. Local agency defined

"Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

§ 66020. Development projects; exactions; protest procedures; refunds

(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d)(1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to

refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f)(1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22. Amended by Stats.1992, c. 605 (A.B.2945), § 1; Stats.1993, c. 589 (A.B.2211), § 80; Stats.1996, c. 549 (A.B.3081), § 2.)

§ 66021. Developments and development projects; protest procedures

(a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest * * * the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction * * * as provided in Section * * * 66020.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

(Amended by Stats.1998, c. 689 (S.B.1362), § 7.)

§ 66022. Judicial actions to challenge fees and charges

(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66023. Requests for audits of local agency fees or charges; independent auditors; costs; local laws superseded

(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66024. Development fees as special taxes; judicial actions

(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66025. Local agency defined

"Local agency," as used in this chapter, means a local agency as defined in Section 66000.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

§ 66030. Legislative findings and intent

(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66031. Actions subject to mediation proceeding; selecting a mediator; considerations; failure to select a mediator

(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese–Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

(Added by Stats.1994, c. 300 (S.B.517), § 1. Amended by Stats.1995, c. 686 (S.B.660), § 7, eff. Oct. 10, 1995, operative Jan. 1, 1996; Stats.1996, c. 799 (S.B.1748), § 7.)

§ 66032. Tolling of time limitations; consideration of mediation as meeting of legislative or state body; reactivation of action; findings of mediator; applicability of Evidence Code sections

(a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.

(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley–Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.

(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:

(1) Arrive at a settlement and implement it in accordance with the provisions of current law.

(2) Agree by written stipulation to extend the mediation for * * * another 90–day period.

* * *

* * *(e) Section 703.5 and * * * Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code * * * apply to any mediation conducted pursuant to this chapter.

(Amended by Stats.1997, c. 772 (A.B.939), § 7.)

§ 66033. Completion of mediation; report to office of permit assistance

(a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Chapter 2 (commencing with Section * * * 1115) of Division 9 of the Evidence Code, containing each of the following:

(1) The title of the action.

(2) The names of the parties to the action.

(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.

(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

(Amended by Stats.1997, c. 772 (A.B.939), § 8.)

§ 66034. Failure of mediation to resolve action; settlement conferences

If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66035. Adoption of rules, forms, and standards

The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66036. Report to legislature

By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

§ 66037. Application of chapter to actions filed on or after January 1, 2006

No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

(Amended by Stats.2002, c. 1016 (A.B.857), § 9.)

State of California • Department of General Services • Gray Davis, Governor
OFFICE OF PUBLIC SCHOOL CONSTRUCTION
Interagency Support Division
1130 K Street, Suite 400 • Sacramento, California 95814 • (916) 445-3160

August 11, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter dated July 10, 2003, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the Clovis Unified School District asking the Commission to determine whether specified costs are incurred by the school district as required by statute in the levying of developer fees (Claim Number 02-TC-42). Following please find responses to the questions addressed in your letter:

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

   Participation in the School Facility Program (SFP), Chapter 12.5 of the Education Code, by a school district is voluntary. The Education Code does not compel a district to obtain funding from the State through the SFP as a condition of building schools. School districts may choose to build facilities through the use of district raised funds. Program elements are only required if a district chooses to participate in the program.

   Additionally, the levying of developer fees is not a requirement to participate in the SFP. Many school districts do levy fees to assist with local matching share requirements; however, other funding sources are available for districts such as the passage of local school facility bonds.

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

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

   Education Code Section 17556(d) states:
   The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increase level of service.

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

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

   State funding is not provided for developer fees.

I have also enclosed for your review the State School Facility Programs Overview brochure, which provides information on the State Allocation Board and the various programs administered by our office. If you have any questions regarding this letter, please contact Ms. Elizabeth Dearstyne, Project Manager, at edearsty@dgs.ca.gov or (916) 323-0073.

Sincerely,

Luisa M. Park

LUISA M. PARK
Executive Officer
Office of Public School Construction

LMP:ED:rm

Enclosures

cc: Commission's Parties and Interested Parties List as of 7/8/2003 (Enclosure)

Original List Date: 7/8/2003
Last Updated:
List Print Date: 07/10/2003
Claim Number: 02-TC-42
Issue: Developer Fees

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586	Tel: (909) 672-9964 Fax: (909) 672-9963
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JACK O'CONNELL
State Superintendent of Public Instruction

CALIFORNIA
DEPARTMENT
OF
EDUCATION
1430 N Street
P.O. Box 944272
Sacramento, CA
94244-2720

August 11, 2003

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) requests comments from interested parties on a number of test claims submitted by the Clovis Unified School District. The test claims are: School Facilities Funding Requirements (02-TC-30), Design Build Contracts (02-TC-45), Developer Fees (02-TC-42), and Deferred Maintenance Programs (02-TC-44). Due to the fact that the comments for these test claims are generally due at the same time and the test claims generally deal with facilities or related issues, we have consolidated our comments into one piece of correspondence. Our comments for each test claim are as follows.

School Facilities Funding Requirements (02-TC-30)

This is not a mandated program. It is one of various capital funding mechanisms available to school districts for the funding of facilities. School districts elect to participate in this program and any requirements regarding this program are applicable only after districts elect to participate in this program.

Design Build Contracts (02-TC-45)

This is not a mandated program. It is one of several delivery options that school districts can choose to pursue, if school districts elect to enter into design build contracts. Other factual inaccuracies in this claim include:

Page 13, line 10 of the claim states: Education Code Section 17250.35, subdivision (a), requires the school district governing board to retain the services of an architect or structural engineer to monitor compliance with the established performance criteria and design standards.

This is incorrect. The Education Code states that the governing board *may*, and is *strongly encouraged* to, retain the services of an architect or structural engineer throughout the course of the project.

Page 14, line 6 of the claim states: Subdivision (d) assigns all liability for the facility to the design-build entity.

This is incorrect. The Education Code states that the design-build entity shall be liable for building the facility to specifications set forth in the design-build contract in the absence of contractual language to the contrary.

Page 15, line 5 of the claim states: To the extent that these guidelines are adopted, districts would be required to comply.

This is incorrect. The Education Code only states that the governing board shall review the guidelines. The Education Code does not require compliance with the guidelines. It should be noted that the claimant correctly interpreted this provision on page 5, line 4 of the test claim.

Developer Fees (02-TC-42)

This is not a mandated program. This is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities. Any requirements that apply to the establishment and collection of developer fees are applicable only after districts elect to levy development fees, charges, and/or dedications.

Deferred Maintenance Programs (02-TC-44)

This is not a mandated program. School district elect to participate in this program in order to receive funding for deferred maintenance and for the removal and containment of asbestos or lead. Any requirements regarding this program are applicable only after districts elect to participate in the program.

As required by CSM regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Should you have questions, please contact Juan Sanchez at (916) 322-3074.

Sincerely,

Gerald C. Shelton

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

JS:db

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: School Facilities Funding Requirements, Design Build Contracts, Developer Fees, and Deferred Maintenance Programs

Claim Number: (02-TC-30), (02-TC-45), (02-TC-42), (02-TC-44)

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 Street, Suite 2213, Sacramento, CA 95814.

On August 11, 2003 I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 Street, Suite 2213, Sacramento, CA 95814, for Interagency Mail Service, to the parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on August 11, 2003, at Sacramento, California.

Juan Sanchez

MAILING LIST

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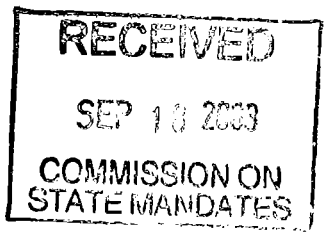
September 13, 2003



Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-42
Clovis Unified School District and
Developer Fees

Dear Ms. Higashi:

I have received the comments of Department of General Services (DGS) by the Office of Public School Construction, dated August 11, 2003, and the State Superintendent of Public Instruction (SPI) dated August 11, 2003 to which I now respond on behalf of the test claimant.

None of the objections generated by SPI are included in the statutory exceptions set forth in Government Code Section 17556. DGS cites subdivision (b) of Section 17556 incorrectly. The objections stated additionally fail for the following reasons:

1. The Comments of the DGS and SPI are Incompetent and Should be Excluded

Test claimant objects to the Comments of the DGS and SPI, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DGS and SPI comments do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the "State School Facility Programs Overview brochure[1] enclosed by DGS since it has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

Furthermore, these "hearsay" statements do not even come up to the level of hearsay or the type of evidence people rely upon in the conduct of serious affairs. The comments submitted by DGS in the form of brochures, undisclosed to all parties, and any allegations of unsupported facts therein, should be stricken from the record.

2. The DGS Response is Vague and Ambiguous

In the first paragraph of its response, DGS clearly indicates that it intends to respond to Test Claim 02-TC-42, "Developer Fees". Then, in the first paragraph of its first point, it directs its comments to the School Facility Program (SFP)[2], and then refers to Chapter 12.5 of the Education Code. Developer Fees is based upon Chapter 6 of Part 10.5 of the Education Code. Test claimant is therefore unable to interpret the comments of DGS to enable it to rebut intelligently.

3. Ignoring a Source of Additional Funding is Not an Option

Both DGS and SPI suggest that developer fees are a mere funding option and not mandatory and that districts may choose to finance the construction of school facilities through the use of "district raised funds".

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[1] Test claimants additionally object to this "document" because it was not provided to the test claimants.

[2] Test Claim 02-TC-30 is a test claim based upon "School Facilities Funding Requirements".

Education Code Section 17620, subdivision (a)(1)[3] authorizes districts to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities. This is in addition to other sources of funding. Ignoring a source of funding and, instead passing the costs on to taxpayers is not a prudent choice.

4. Bond Revenues are not Service Charges, Fees or Assessments

DGS offers Government Code Section 17556, subdivision (d)[4] for the proposition that test claimants are precluded from recovery because the mandated costs can be paid for by local bonds or other revenue sources, including developer fees. Bond revenues and other revenue sources are not "service charges, fees or assessments".

In addition, Section 17556 presupposes the existence of a mandate which is contrary to the state's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students, not developers. Finally, the levy of service charges, fees and assessment against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

The responses of the DGS and SPI should be ignored as legally incompetent for their failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, the test claim should be approved as submitted because their comments are both factually and legally incorrect.

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[3] Education Code Section 17620, added by Chapter 277, Statutes of 1996, Section 3, as amended by Chapter 135, Statutes of 2000, Section 33:

"(a)(1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 of the Government Code. This fee, charge, dedication, or other requirement may be applied to construction only as follows:
(A)..."

[4] Government Code Section 17556, subdivision (d), precludes a finding of mandated costs if the school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

Original List Date: 7/8/2003
Last Updated:
List Print Date: 07/10/2003
Claim Number: 02-TC-42
Issue: Developer Fees

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Arthur Palkowitz San Diego Unified School District 4100 Normal Street, Room 3159 San Diego, CA 92103-8363	Tel: Fax:	(619) 725-7565 (619) 725-7569
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	(916) 454-7310 (916) 454-7312
Mr. Michael Havey State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	(916) 445-8757 (916) 323-4807
Ms. Beth Hunter Centration, Inc. 8316 Red Oak Street, Suite 101 Rancho Cucamonga, CA 91730	Tel: Fax:	(866) 481-2642 (866) 481-5383
Mr. Gerald Shelton California Department of Education (E-08) Fiscal and Administrative Services Division 1430 N Street, Suite 2213 Sacramento, CA 95814	Tel: Fax:	(916) 445-0554 (916) 327-8306
Mr. Keith Gmeinder Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913 (916) 327-0225
Ms. Luisa M. Park Office of Public School Construction 1130 K Street, Suite 400 Sacramento, CA 95814	Tel: Fax:	

DECLARATION OF SERVICE

RE: Developer Fees
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of September 13, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

FAX: (916) 445-0278

AND per mailing list attached

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 9/16/03, at San Diego, California.

Diane Bramwell

DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 9, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the Commission on State Mandates' Test Claim No. 02-TC-42, Developer Fees, submitted by the Clovis Unified School District. The Claimant cites statutes in seven chapters of the Education Code and the Government Code as the basis of the test claim. The test claim alleges State-mandated costs for school districts to establish and implement policies and procedures to comply with the collection of developer fees. As explained below, we find that a school district's participation in the collection of developer fees is a discretionary action on the part of the school. We find nothing in the Claimant's cited statutes or applicable regulations that makes the collection of developer fees a compulsory activity. Instead, we note that two statutes—Education Code Section 17620 and Government Code Section 65971—merely authorize school districts to levy developer fees. Moreover, the majority of the remaining cited statutes pertain to "downstream" activities that would only apply if a school district chooses to collect developer fees. Consequently, we conclude that a school district's compliance with the requirements for the collection of developer fees does not create a State-mandated reimbursable activity.

Development Fees, Charges, and Dedications (Chapter 6, Part 10.5 of the Education Code, School Facilities)—The Claimant cites Education Code Sections 17620 et al. as a partial basis for the test claim. We note that Education Code Section 17620(a)(1), in part, states that "The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities ..." (Underlining added.) By stating that a governing board is "authorized" to levy a fee, charge, etc, the statute is merely making the action permissive—not compulsory. Thus, a school district has the discretion whether to levy a fee, charge, etc. in accordance with the statute, thereby making it a voluntary program. As such, notwithstanding the requirements of other provisions of the chapter, we note 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 *Department of Finance v. Commission On State Mandates (2003) 30 Cal. 4th 727,* 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 increased level of activity.

School Facilities (Chapter 4.7, Title 7 of the Government Code, Planning and Land Use)— The Claimant cites Government Code Sections 65970 et al. as a partial basis for the test claim. Government Code Section 65971(a) states "The governing board of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence: (1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions. (2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist." (Underlining added.) By including the wording, "if the governing body makes," the statute gives the governing body discretion in the action that it may take.

Also, Government Code Section 65974(a) reads "For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city ... may, by ordinance, require the dedication of land, the payment of fees, in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur: ..." Further, Government Code Section 65981 reads "If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter." (Underlining added.)

It is clear from the above-cited statutes that a school district has the choice whether to recommend that a fee be levied on development in accordance with provision of this chapter. Given this discretion, school district participation in the developer fee program is voluntary. As such, notwithstanding the requirements of other provisions of the chapter, we note 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. Again, consistent with the *Department of Finance v. Commission On State Mandates (2003) 30 Cal. 4th 727,* 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 increased level of activity.

Payment of Fees, Charges, Dedications, or Other Requirements Against a Development Project (Chapter 4.9, Title 7 of the Government Code, Planning and Land Use)—The Claimant cites Government Code Sections 65995 et al. as a partial basis for the test claim. We found that this chapter primarily applies to fees, charges, dedications or other requirements against a development project as authorized in Education Code Section 17620 or pursuant to Chapter 4.7 (commencing with Section 65970) of the Government Code. To the extent fees, charges, etc. are authorized, the chapter prescribes certain provisions that would apply, including fee levels; contract requirements between a school district, and a city or county; the use of the fees and charges; school facilities needs analysis; conditions of approval of development projects; adequacy of school facilities; mitigation of environmental effects; and other applicable provisions of law.

proceedings, selection of a mediator, other considerations, failure to select a mediator, adoption of rules, forms and standards; and other provisions relating to the mediation of fees, charges, and other requirements imposed on a development project. Because Section 66031(a)(5) makes these requirement subject to any fees determined pursuant to Chapter 5 (commencing with Section 66000), we conclude that the mediation and dispute resolution activities of this chapter are downstream activities of a district participating in a voluntary program and do not constitute a State-mandated reimbursable cost.

Administrative Costs—Finally, we note that Education Code Section 17620(a)(5) provides that "Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code." (Underlining added.)

As indicated in subsection (a)(5), the statute already provides for the payment of costs incurred by a school district when it elects to participate in a voluntary developer fee program pursuant to Education Code Section 17620 or Chapters 4.7 and 4.9 of Title 7 of the Government Code . Therefore, this test claim should be denied.

Based on the aforementioned reasons, we conclude that the cited State laws do not create an unfunded State-mandated reimbursable program or cost; therefore the test claim should be denied.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 10, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-42

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

February 9, 2004
at Sacramento, CA

Walt Schaff
Walt Schaff

PROOF OF SERVICE

Test Claim Name: Developer Fees
Test Claim Number: CSM-02-TC-42

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 9, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

A-17
Office of Public School Construction
Attention: Luisa M. Park
1130 K Street, Suite 400
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Clovis Unified School District
Attention: Bill McGuire
1450 Herndon
Clovis, CA 93611-0599

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

E-08
Department of Education
Attention: Gerald Shelton
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
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Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
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Shields Consulting Group, Inc.
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Sacramento, CA 95816

Centration, Inc.
Attention: Beth Hunter
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Mandated Cost Systems, Inc.
Attention: Steve Smith
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Rancho Cordova, CA 95670

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2004, at Sacramento, California.

Jennifer Nelson

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
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San Diego, CA 92117

Telephone: (858) 514-8605
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February 27, 2004

Paula Higashi, Executive Director
Commission on State Mandates
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980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-42
Clovis Unified School District
Developer Fees

Dear Ms. Higashi:

I have received the opposition and comments of the Department of Finance ("DOF") dated February 9, 2004, to which I now respond on behalf of the test claimant.

A. The Opposition and Comments of the DOF are Incompetent and Should be Excluded

The test claimant objects to the Opposition and Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The DOF opposition and comments do not comply with this essential requirement. Since the Commission cannot use comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments of the DOF not be included in the Staff's Analysis.

B. Building School Facilities is not a Discretionary Act

DOF relies on that portion of Education Code Section 17620 which states that school districts are "authorized" to levy a fee, charge, dedication, or other requirement for the purpose of funding the construction or reconstruction of school facilities. DOF argues that the verb "authorized" requires a conclusion that the program is permissive. DOF goes on to then argue that all of the test claim activities alleged are merely "downstream" activities following the initial "discretionary decision" to use developer fees to build necessary schools.

The California Research Bureau has published a study entitled "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)[1] The derivation of the verb "authorized" is explained as follows:

> "In 1978, the Wilsona School District was the first to use developer fees....While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees." (Cohen, *op.cit.*, Appendix A, at page 37)

So the use of the verb "authorized" was used primarily, *ex post facto*, to ratify what school districts were already doing. But, there are more compelling reasons why the use of developer fees is not discretionary.

School districts have, basically, three sources of funds for new facilities and modernization projects: (1) the proceeds of their own district bonds, (2) state funds, and (3) developer fees. Each of the three are needed to do the job.

(1) A District's Ability to Borrow for Needed School Facilities is Strictly Limited

The authority to issue local school bonds is found in Chapter 1 of Part 10 in Division 1 of Title 1 of the Education Code, commencing at Section 15100. This authority is strictly limited.

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[1] A true and exact copy of the report as it appears on the current website of the California Research Bureau is attached hereto as Exhibit "A" and is incorporated herein by reference.

Education Code Section 15100 allows a district, when in its judgment it is advisable, and requires it, upon a petition of the majority of its qualified electors, to order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the purchase of school lots, the building or purchasing of school buildings and the making of alterations or additions to school buildings. Section 15102 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district. Section 15106 provides that unified school districts or community college districts may not exceed 2.5 percent of the taxable property of the district.

Chapter 1.5 of Part 10 sets forth the Strict Accountability in Local School Construction Bonds Act of 2000, commencing with Section 15264. ("Proposition 39 bonds") Here again, bonded indebtedness is strictly limited.

Section 15266 provides that the Act is an alternative to authorizing and issuing bonds pursuant to Chapter 1 or Chapter 2 (commencing with Section 15300) when the governing board of a school district or community college district decides, pursuant to a two-thirds vote, to pursue the authorization and issuance of bonds for school facilities. Section 15268 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district and may only be issued if the tax rate levied would not exceed thirty dollars ($30) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. Section 15270 provides that a unified school district may not authorize or issue bonds that exceed 2.5 percent of the taxable property of the district and may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars ($60) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

Chapter 2 of Part 10 sets forth the Bonds of School Facilities Improvement Districts Act, commencing with Education Code Section 15300. Here again, bonded indebtedness is strictly limited.

Section 15300 provides that the chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by the school facilities improvement district. Section 15330 provides that the total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the

school facilities improvement district. Section 15334.5 further provides that no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

(2) The State's Ability to Fully Fund Needed School Facilities is Limited

In the study entitled "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds" (Exhibit "A"), the plight of school districts is described therein as follows:

> "As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 student during the next decade that will require many districts to build new schools to meet burgeoning student demand." (Cohen, *op.cit.*, at page 1)

This independent study does not say school districts will have the discretion to build new schools, it concludes that districts will be required to build them. The report goes on to say:

> "It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the $6.7 billion approved by Proposition 1A, experts estimate that an additional $10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use 'whatever' means available to them to secure funding. (Cohen, *op.cit.*, at page 2)

Developer fees are the major "whatever" available to school districts to secure necessary funding. The historical path to this situation was explained:

> "With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction.

> Further, local governments lost much of their property taxing authority..." (Cohen, *op.cit.*, at page 7)

Therefore, in the post-Proposition 13 era, school financing became a collective effort:

> "In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector. This concept was known as the 'three legged stool.' The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees." (Cohen, *op.cit.*, at page 15)

The need for developer fees can be measured, partly, by the statistics:

> "Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board....Statewide, developer fees have increased from $31 million in 1978 to $200 million in 1997." (Cohen, *op.cit.*, at page 16)

Even with Proposition 1A money, the report still projected a shortfall of available funds for school construction:

> "...by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than $1.3 billion...there were times during the past five decades when bond money was not available for periods of four or six years. (¶) The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation....in the end, Proposition 1A was passed....However, while the amount appears to be generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following the bond issue will require roughly an additional $10 billion in State money." (Cohen, *op.cit.*, at page 19)

In fact, the worm is growing so large that it will soon swallow the fish:

> "The State's bond capacity may not be able to fund every State

infrastructure need, including schools, transportation, prisons and water during the next decade. School facility needs are estimated conservatively at roughly $10 billion, while some estimates have put the figure at $40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately $25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State." (Cohen, *op.cit.*, at page 36)

(3) Subsequent Events Have Not Abated the Need

On November 5, 2002, California passed Proposition 47, the Kindergarten-University Public Education Facilities Bond Act of 2002. (Education Code Sections 100600, et seq.) This bond act provided 13.05 billion dollars for school facilities construction. Of this amount, 11.4 billion dollars was allocated to K-12 school district new construction and modernization. (See: Education Code Section 100620)

Now, Proposition 55 appears on the upcoming March 2, 2004 ballot which, if passed, would enact the Kindergarten-University Public Education Facilities Bond Act of 2004. According to the official ballot information pamphlet[2] prepared by the California Attorney General and published by the California Secretary of State, through September 2004, school districts have identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. The state cost to address these needs is estimated to be roughly $16 billion, yet only $10 billion is earmarked for K-12 school districts.

So it can be seen that even if Proposition 55 is passed, there still is not enough state money to full satisfy the need for school facilities construction.[3]

For the DOF to argue that school districts need not use developer fees to build new and modernize old schools is so far beyond the realm of practical reality so as not to be seriously considered.

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[2] A true and exact copy of that portion of the ballot information pamphlet relative to Proposition 55 (excluding partisan arguments and text of proposed law) as it appears on the website of the Secretary of State is attached hereto as Exhibit "B" and is incorporated herein by reference.

[3] If Proposition 55 does not pass, the need for other sources of funds, such as developer fees, will even be greater.

C. Legal Compulsion is not Necessarily Required For a Finding of a Mandate

A finding of legal compulsion is not absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II).*

(1) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566

so coercive as to constitute a "mandate of the federal government" under Section 9(b).[4]

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion".

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion".

(4) *Sacramento II* "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I,* the court explained:

> "If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

> "However, we cannot imagine the drafters and adopters of article XIII B

---

[4] Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

> intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion" to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

> "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(5) The "Kern" Case Did Not Change the Standard

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736, ("Kern") the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

> "For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

> "In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in (Sacramento II), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

The test for determining whether there is a mandate is whether compliance with the test claim legislation is a matter of true choice, that is whether participation is truly voluntary. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582 In light of the history of funding new school facilities and modernization projects (supra), the only real "choice" school districts have is to either (1) build and modernize or (2) not educate their children. This is not a true choice, school districts are compelled to use developer fees to provide suitable housing for their students. Not educating their children is so far beyond the realm of practical reality, that it leaves school districts without any rational discretion.

D. When New Development Causes Overcrowding, the "Downstream Activities" are Mandated

When the governing body of a school district makes both of the following findings:

> (1) That conditions of overcrowding[5] exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions; and
>
> (2) That all reasonable methods of mitigating conditions of overcrowding[6]

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[5] "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district. Government Code Section 65973(a)

[6] "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or

have been evaluated and no feasible method for reducing those conditions exist,

it shall notify the city council or board of supervisors of the city or county within which the school district is located. Government Code Section 65971(a)

The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). Government Code Section 65971(b)

Thereafter, for the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development. Government Code Section 65974(a)

Notwithstanding any other provision of the chapter, the governing board of any school district that receives funds that are collected pursuant to the chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080[7], where the governing board has first held a public hearing on the subject of the proposed expenditure.

Therefore, once conditions of overcrowding exist in one or more attendance area of a district which will impair the normal functioning of educational programs, and all reasonable methods of mitigation has been evaluated and no reasonable method for

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temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts. Government Code Section 65973(b)

[7] Government Code Section 53080 was repealed by Chapter 277, Statutes of 1996, Section 7, operative January 1, 1998. The subject matter of the repealed section is now found in Education Code Section 17620.

reducing overcrowding those conditions are found, the governing board is required[8] to make a finding of those conditions and is *required* to notify the city council or board of supervisors. There is no "choice" from which "downstream activities" flow.

E. The Availability of Some Offsetting Costs Does Not Bar the Finding of a Mandate

DOF cites Education Code Section 17620(a)(5):

> "(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, "fees collected in that fiscal year pursuant to this section" does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code."

for the conclusion that the statute already provides for the payment of costs incurred when a school district elects to participate in a developer fee program.

Implicitly, DOF relies on subdivision (e) of Government Code Section 17556:

> "The Commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commissions finds that:....
>
> (e) The statute of executive order provides for offsetting savings to

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[8] There is a rebuttable presumption that an official duty has been regularly performed. Evidence Code Section 664 Therefore, DOF must rebut this presumption by showing the nonexistence of the presumed fact. Evidence Code Section 606

local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

First of all section 17620(a)(5) only applies to costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. It does not allow for the offsetting of other costs.

Secondly, subdivision (4) of section 17620 allows a city or county under contract to collect on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In that event, when any city or county is entitled to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district and the school district receives no part of the fee.

Finally, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. This set aside only covers the administrative costs of collecting the fee and not other costs. And the set aside of 3 percent may, or may not be, sufficient to cover the administrative costs of collecting the fee.

It is quite apparent, then, that the conditions of subdivision (e) of Government Code section 17556 are not a bar to a finding of this mandate because there is no showing that the additional revenue is in an amount sufficient to fund the cost of the state mandate. Also, the possible funding is not contained in the same statute. Any revenues actually received can be considered the parameter and guidelines phase to offset the actual costs of providing those administrative costs.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of

/
/
/
/
/

California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Developer Fees 02-TC-42
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of February 27, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 2/27/04 , at San Diego, California.

Diane Bramwell

Original List Date: 7/8/2003
Last Updated:
List Print Date: 07/30/2003
Claim Number: 02-TC-42
Issue: Developer Fees

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT "A"

CRB - SCHOOL FACILITY FINANCING

Cohen, Joel - February 1999

CRB

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School Facility Financing

A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

By Joel Cohen

Prepared at the Request of Senator Quentin Kopp

FEBRUARY 1999

CRB 99-01

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CONTENTS

EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is 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 student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides $6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the $6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the $6.7 billion approved by Proposition 1A, experts estimate that an additional $10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction then it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?

- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a $9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide $6.7 billion to public K-12 schools and $2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the $6.7 billion available to K–12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947[1] when the state legislature created the State Allocation Board.[2] Chapter 243, Statutes of 1947, established the State Allocation Board[3] as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.[4] Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.[5]

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.[6] Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949[7] and 1952[8] established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."[9] During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.[10] The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.[11] This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.[12] School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing[13] in the amount of $250 million.[14] This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that $400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to $250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."[15] In arguments

against the bond, opponents argued that $250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of $185 million was put before the voters. Proponents of this initiative stated that the amount was "extremely" conservative. A comprehensive study by the State Department of Education at that time revealed that $198 million was needed, while the Department of Finance estimated the need at $250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included "poison pill" language that limited the Legislature's ability to appropriate any additional funds for school construction beyond that in the various propositions.[16] If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized $30 million[17] for a new program to finance the rehabilitation and construction of earthquake safe schools,[18] and for the renovation of buildings that the earthquake damaged.[19] This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of $350 million of which $250 million was set aside for structural repairs due to earthquakes.[20] This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,[21] and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.[22] Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.[23]

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.[24] In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.[25]

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of $1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.[26] In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.[27] 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 Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.[28] Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created "priority points" for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district's application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.[29] The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 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.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three[30] state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of $550 million[31] that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a $3.8 billion surplus, to fill the gap.[32] In 1979, lawmakers approved a $2.7 billion (in 1978 dollars) "bailout" plan to assist schools and local governments.[33] Within a year, the state surplus was reduced to roughly $1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.[34]

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.[35] School districts that received funds from the state were required to pay rent to the State as low as $1 per year, creating an "unofficial" grant program.[36] In addition, school districts were to contribute up to 10% of the project's cost from local funds.[37] However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.[38] Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.[39] At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.[40] The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be $1.9 billion.[41] Further, CASH estimated that school districts would need an additional $400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.[42] The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of $200 million for school construction projects. This amount was later reduced to $100 million.[43]

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.[44] Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.[45] The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent[46] of the cost that would be necessary to build a new facility not to exceed $125 per student.[47] School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.[48] This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13[49] by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.[50] This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.[51]

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an $800 million bond initiative. It specifically set aside $100 million to cover asbestos removal.[52]

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.[53] As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly $1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over $991 million.[54] Total demand for school facility improvement in 1986 was nearly $2.3 billion - an amount that significantly outweighed the $800 million voters approved in that year's bond initiative.[55] Even with a boost of funding of $150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.[56] By 1988, the shortfall had grown to $4 billion, in spite of the fact that voters had approved $2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.[57] This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at $1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.[58] California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of $8700 per house.[59] By 1990, total development fees for some homes reached $30,000.[60] Statewide, developer fees have increased from $31 million in 1978 to $200 million in 1997.

In 1998, the State Allocation Board increased the fee to $1.93 per square foot.[61] With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.[62] The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an "operating grant" of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.[63]

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of "unhoused students," or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.[64] In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a "substantial"[65] enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a "substantial" year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the "substantial enrollment" criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.[66]

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.[67] A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for $1.6 billion and in 1992 for $2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,[68] and that an estimated $3 billion would be needed annually for new school construction.[69] However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a $1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.[70]

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.[71]

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.[72] The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.[73] Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.[74]

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided $2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need $7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.[75] This $7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed $3 billion to upgrade and modernize its schools.[76] Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.[77] Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.[78]

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked $95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to $200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.[79] The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than $1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,[80] there were times during the past five decades when bond money was not available for periods of four or six years.[81]

The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation.[82] Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue $2 billion a year for 10 years.[83] Governor Wilson proposed $2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides $6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional $10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS		
Title of Bond Initiative	**Date & Year of Election**	**Funds Authorized**
School Building Aid Law of 1949	November 8, 1949	$250,000,000
School Building Aid Law of 1952	November 4, 1952	$185,000,000
School Building Aid Law of 1952	November 2, 1954	$100,000,000
School Building Aid Law of 1952	November 4, 1958	$220,000,000
School Building Aid Law of 1952	June 7, 1960	$300,000,000
School Building Aid Law of 1952	June 5, 1962	$200,000,000
School Building Aid Law of 1952	November 3, 1964	$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	$800,000,000
1988 School Facilities Bond Act	November 8, 1988	$800,000,000
1990 School Facilities Bond Act	June 5, 1990	$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

A) New amount of 1966 bond authorization available for regular program is $185.5 million after deducting $35 million reserved for compensatory education facilities, $9.5 million for regional occupational centers, and $35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.

B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.

C) One billion dollars earmarked for higher education facilities

D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).[84] The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.[85]

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.[86]

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.[87] Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,[88] along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.[89] In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.[90] In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for $4,000 per year. Hardship cases could lease portables for $2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at $9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease–Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for "official" school purposes. "Official" school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state's various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board's Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board's review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district's application fit a program's description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, "special considerations," or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or "specials," and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A "special" occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district's administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.[91] The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.[92]

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.[93] The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional $6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: $3.35 billion available immediately; and $3.35 billion available after July 2, 2000. Of the $3.35 billion that is immediately available, $1.35 billion is earmarked for new construction, $800 million for modernization, $500 million for hardship cases, and $700 million for class-size reduction.

For the second $3.35 billion distribution, $1.55 billion will be available for new construction, $1.3 billion for modernization, and $500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused [94]average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	$5,200	$2,496
Middle School	$5,500	$2,640
High School	$7,200	$3,456

It is anticipated that the initial $1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.[95] The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is "hardship," in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.[96]

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous "Lease Purchase Program." This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a "hardship" case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.[97] Proposition 1A suspends, until 2006, the Court's ruling.[98] With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to $1.93 per square foot.[99] Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board's previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board's previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state. Priority 2 projects-growth and modernization-received 100 percent funding form the state.	Growth projects receive 50 percent funding based on a per pupil formula from the state. Modernization projects receive 80% funding from the state. Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.	Excessive costs are not reimbursed by the state and school districts keep costs savings.
MODERNIZATION PROJECTS	Buildings must be at least 30 years old.	Buildings must be at least 25 years old.
PROJECT APPROVAL	Projects were approved three times in conjunction with the planning, site acquisition and construction phases.	Projects receive one approval (except hardships that receive two approvals).
FUND ALLOCATION	Funds were allotted after each phase.	Funds are allotted only after DSA approves plans, unless there is a hardship.
MAINTENANCE OF FACILITIES	Required school districts to set aside two percent of their general fund for ongoing maintenance.	Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.
PROPERTY LIENS	State maintains a lien to properties it funds.	State does not hold liens, and existing liens are released.
ARCHITECTURAL APPROVAL	Division of State Architect approved all plans.	The Division of State Architect or a state approved private engineering firm may approve plans.

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was $1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is $1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.[100] This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.[101]

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.[102] The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.[103] Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.[104] One can obtain information in person or from the office's Internet site.[105] In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be "bumped" up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive $6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly $10 billion, while some estimates have put the figure at $40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately $25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.[106]

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about $2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

ENDNOTES

[1] Chapter 243, Statutes of 1947.

[2] 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 of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

[3] Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

[4] California Government Code 15502.

[5] Government Code 15490.

[6] While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

[7] Amendments to the Constitution, Proposition 1, November 8, 1949.

[8] Amendments to the Constitution, Proposition 4, November 4, 1952.

[9] Op.cit.

[10] California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

[11] This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

[12] Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

[13] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[14] Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

[15] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[16] Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

[17] School Building Safety Fund, December 1971.

[18] The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

[19] Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

[20] Ibid.

[21] State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

[22] Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

[23] Op.cit., p. 2.
[24] Ibid.
[25] Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.
[26] Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.
[27] Section 17700 et al., Education Code.
[28] Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.
[29] Op.cit., p. 2.
[30] Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.
[31] Proposition 1 of 1976 would have provided $250 million, and Proposition 1 of 1978 would have provided $300 million.
[32] Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.
[33] Ibid.
[34] Karmin, Bennett. California's Bankrupt Schools. " New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A–14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.
[35] Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.
[36] While the loan program was still on the books, the state made exceptions to aid school districts.
[37] California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.
[38] California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.
[39] Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.
[40] Ibid.
[41] Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).
[42] This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.
[43] Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.
[44] Assembly Bill 62, Chapter 820, Statutes of 1982.
[45] California Department of Education. California Year-Round Education Directory 1997-98.
[46] For example, a school district that needed to build a new elementary school that cost $4 million could receive $400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

[47] Chapter 886, Statutes of 1986, added provisions that capped the grant at $125 per student.
[48] School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than $1.8 billion in construction costs since its inception. In 1997-98, $66 million was allocated from the "mega item" of the state budget. About $40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
[49] Proposition 46 on the June 1986 Ballot.
[50] Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
[51] Proposition 46: Property Taxation, June 3, 1986.
[52] DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.
[53] School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
[54] Op.cit.
[55] Op.cit.
[56] State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
[57] AB 2926, Statutes of 1986.
[58] These were referred to as the Mira, Hart, Murrieta court cases.
[59] Later that year, fees were capped by the Legislature at $1.50 per square foot on residential units statewide.
[60] Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
[61] Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.
[62] Chapter 1261, Statutes of 1990.
[63] Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
[64] Op.cit.
[65] Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
[66] Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
[67] The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
[68] Department of Finance, School Populations Projections. 1998.
[69] Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.
[70] Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
[71] County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
[72] Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.
[73] The passage required a two-thirds vote by the legislature.
[74] November 1993, Proposition 170 failed by 70 percent.

[75] Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the $7 billion, $1.6 billion was estimated for overhauls of buildings over 30 years old, and $5.6 billion for new construction and classroom additions.

[76] Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

[77] If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

[78] See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

[79] Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

[80] State bonds were proposed biannually in 1988, 1990, and 1992.

[81] In 1976 and 1978 bond measures were defeated by the electorate.

[82] "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

[83] "Huge School Bond Mulled" California Public Finance, September 8, 1997, p. 1.

[84] This included the type of facility and the number of teaching stations (classrooms).

[85] The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

[86] For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid $48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

[87] A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

[88] This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

[89] Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

[90] Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

[91] Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

[92] Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

[93] To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

[94] The number of students above the maximum number set by CDE to be in a classroom.

[95] The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

[96] In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

[97] The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

[98] In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see Mira Development Corporation v. City of San Diego, William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles, Murietta Valley Unified School District v. County of Riverside. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

[99] If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

[100] Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

[101] However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

[102] Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

[103] One streamlined step is the self-certification process in the Lease Purchase Program.

[104] However, in light of the office's accomplishments, the author had to request information routinely more than once.

[105] www.dgs.ca.gov/opsc.

[106] School Services of California.

EXHIBIT "B"

Proposition 55 Ballot Proposition Materials

Official Voter Information Guide

California PRIMARY ELECTION

Propositions

OFFICIAL TITLE AND SUMMARY
Prepared by the Attorney General

Proposition 55

KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2004.

- This act provides for a bond issue of twelve billion three hundred million dollars ($12,300,000,000) to fund necessary education facilities to relieve overcrowding and to repair older schools.
- Funds will be targeted to areas of greatest need and must be spent according to strict accountability measures.
- Funds will also be used to upgrade and build new classrooms in the California Community Colleges, the California State University, and the University of California, to provide adequate higher education facilities to accommodate growing student enrollment.
- Appropriates money from General Fund to pay off bonds.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State costs of about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion) costs on the bonds. Payments of about $823 million per year.

Final Votes Cast by the Legislature on AB 16 (Proposition 55)

Assembly:	Ayes 71	Noes 8
Senate:	Ayes 27	Noes 11

Propositions

ANALYSIS BY THE LEGISLATIVE ANALYST

Proposition 55

BACKGROUND

Public education in California consists of two distinct systems. One system includes local school districts that provide elementary and secondary (kindergarten through 12th grade, or "K-12") education to about 6.2 million pupils. The other system (commonly referred to as "higher education") includes the California Community Colleges (CCCs), the California State University (CSU), and the University of California (UC). The three segments of higher education provide education programs beyond the 12th grade to the equivalent of about 1.6 million full-time students.

K-12 Schools

School Facilities Funding. The K-12 schools receive funding for construction and modernization (that is, renovation) of facilities from two main sources—state general obligation bonds and local general obligation bonds. General obligation bonds are backed by the state and school districts, meaning that they are obligated to pay the principal and interest costs on these bonds.

- ***State General Obligation Bonds.*** The state, through the School Facility Program (SFP), provides money for school districts to buy land and to construct and renovate K-12 school buildings. Districts receive funding for construction and renovation based on the number of pupils who meet the eligibility criteria of the program. The cost of school construction projects is shared between the state and local school districts. The state pays 50 percent of the cost of new construction projects and 60 percent of the cost for approved modernization projects. (Local matches are not necessary in "hardship" cases.) The state has funded the SFP by issuing general obligation bonds. General Fund revenues would be used to pay these costs. These revenues come primarily from state income and sales taxes. Over the past decade, voters have approved a total of $20.1 billion in state bonds for K-12 school construction. About $1.9 billion of these funds remain available for expenditure.
- ***Local General Obligation Bonds.*** School districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last ten years, school districts have received voter approval to issue more than $37 billion of general obligation bonds.

Although school facilities have been funded primarily from state and local

general obligation bonds, school districts also receive significant funds from:

- ***Developer Fees.*** State law authorizes school districts to impose developer fees on new construction. These fees are levied on new residential, commercial, and industrial developments. Statewide, school districts report having received an average of over $400 million a year in developer fees over the last decade.
- ***Special Local Bonds (Known as "Mello-Roos" Bonds).*** School districts may form special districts in order to sell bonds for school construction projects. (These special districts generally do not encompass the entire school district.) The bonds, which require two-thirds voter approval, are paid off by charges assessed to property owners in the special district. Statewide, school districts have received on average about $270 million a year in special local bond proceeds over the past ten years.

K-12 School Building Needs. Under the SFP, K-12 school districts must demonstrate the need for new or modernized facilities. Through September 2004, the districts have identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. The state cost to address these needs is estimated to be roughly $16 billion.

Higher Education

California's system of public higher education includes 141 campuses in the three segments listed below, serving about 1.6 million students:

- The CCCs provide instruction to 1.1 million students at 108 campuses operated by 72 locally governed districts throughout the state. The community colleges grant associate degrees and also offer a variety of vocational skill courses.
- The CSU has 23 campuses, with an enrollment of about 331,000 students. The system grants bachelor and master degrees, and a small number of joint doctoral degrees with UC.
- The UC has nine general campuses, one health sciences campus, and various affiliated institutions, with a total enrollment of about 201,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for conducting research.

Over the past decade, the voters have approved $5.1 billion in general obligation bonds for capital improvements at public higher education campuses. Virtually all of these funds have been committed to specific projects. The state also has provided almost $1.6 billion in lease revenue bonds (authorized by the Legislature) for this same purpose.

In addition to these state bonds, the higher education segments have other sources of funding for capital projects.

FIGURE 1	
PROPOSITION 55 USES OF BOND FUNDS	
	Amount (in Millions)
K-12	
New construction projects	$5,260[a]

Modernization projects	2,250
Critically overcrowded schools	2,440
Joint use	50
Subtotal, K-12	($10,000)[b]
Higher Education	
Community Colleges	$920
California State University	690
University of California	690
Subtotal, Higher Education	($2,300)
TOTAL	$12,300
[a]Up to $300 million available for charter schools. [b]Up to $20 million available for energy conservation projects.	

- ***Local General Obligation Bonds.*** Community college districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last decade, community college districts have received local voter approval to issue over $7 billion of bonds for construction and renovation of facilities.
- ***Gifts and Grants.*** The CSU and UC in recent years together have received on average over $100 million annually in gifts and grants for construction of facilities.
- ***UC Research Revenue.*** The UC finances the construction of new research facilities by selling bonds and pledging future research revenue for their repayment. Currently, UC uses about $130 million a year of research revenue to pay off these bonds.

Higher Education Building Plans. Each year the institutions of higher education prepare capital outlay plans in which they identify project priorities over the next few years. Higher education capital outlay projects in the most recent plans total $5.3 billion for the period 2003-04 through 2007-08.

PROPOSAL

This measure allows the state to issue $12.3 billion of general obligation bonds for construction and renovation of K-12 school facilities ($10 billion) and higher education facilities ($2.3 billion). Figure 1 shows how these bond funds would be allocated to K-12 and higher education.

Future Education Bond Act. If the voters do not approve this measure, state law requires the same bond issue to be placed on the November 2004 ballot.

K-12 School Facilities

Figure 1 describes generally how the $10 billion for K-12 school projects would be allocated. However, the measure would permit changes in this allocation with the approval of the Legislature and Governor.

New Construction. A total of $5.26 billion would be available to buy land and construct *new* school buildings. A district would be required to pay for 50 percent of costs with local resources unless it qualifies for state hardship

funding. The measure also provides that up to $300 million of these new construction funds is available for charter school facilities. (Charter schools are public schools that operate independently of many of the requirements of regular public schools.)

Modernization. The proposition makes $2.25 billion available for the reconstruction or modernization of existing school facilities. Districts would be required to pay 40 percent of project costs from local resources.

Critically Overcrowded Schools. This proposition directs a total of $2.44 billion to districts with schools which are considered critically overcrowded. These funds would go to schools that have a large number of pupils relative to the size of the school site.

Joint-Use Projects. The measure makes a total of $50 million available to fund joint-use projects. (An example of a joint-use project is a facility constructed for use by both a K-12 school district and a local library district.)

Higher Education Facilities

The measure includes $2.3 billion to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings for California's public higher education systems. As Figure 1 shows, the measure allocates $690 million each to UC and CSU and $920 million to CCCs. The Governor and the Legislature would select the specific projects to be funded by the bond monies.

FISCAL EFFECT

The cost of these bonds would depend on their interest rates and the time period over which they are repaid. If the $12.3 billion in bonds authorized by this proposition is sold at an interest rate of 5.25 percent (the current rate for this type of bond) and repaid over 30 years, the cost over the period would be about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion). The average payment for principal and interest would be about $823 million per year.

Back to Top

Hearing Date: December 1, 2011
J:\MANDATES\2002\tc\02-tc-42 (Developer Fees)\TC\dsa.docx

ITEM __

TEST CLAIM
DRAFT STAFF ANALYSIS

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981, 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032, 66034, and 66037 as added, amended or renumbered by Statutes 1977, Chapter 955, Statutes 1979, chapter 282, Statutes 1980, Chapter 1354, Statutes 1981, Chapter 201, Statutes 1982, Chapter 923, Statutes 1983, Chapters 921 and 1254, Statutes 1984, Chapter 1062, Statutes 1985, Chapter 1498, Statutes 1986, Chapters 136, 685, 887, and 888, Statutes 1987, Chapters 927, 1002, 1037, 1184 and 1346, Statutes 1988, Chapters 29, 160, 418, 912 and 926, Statutes 1989, Chapters 170, 1209 and 1217, Statutes 1990, Chapters 633 and 1572, Statutes 1992, Chapters, 169, 231, 487, 605 and 1354, Statutes 1993, Chapters 589 and 1195, Statutes 1994, Chapters 300, 686, 983 and 1228, Statutes 1995, Chapter 686, Statutes 1996, Chapters, 277, 549, 569, and 799, Statutes 1997, Chapter 772, Statutes 1998, Chapters 207, 407 and 689, Statutes 1999, Chapters 300 and 858, Statutes 2000, Chapter 135 and Statutes 2002, Chapters 33 and 1016

Developer Fees
02-TC-42

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This test claim addresses activities required as a condition of imposing developer fees to help pay for school facilities. There are three developer fee programs at issue in this test claim that are commonly referred to as: The School Facilities Act, AB 2926, and the Mitigation Fee Act. This test claim also addresses mediation and settlement proceedings that are authorized under the Mediation and Resolution of Land Use Disputes Law when a litigant brings an action in superior court to contest, among other things, actions taken or developer fees imposed under the AB 2926 and the Mitigation Fee Act programs.

The School Facilities Act[1] provides that if a school district makes written findings of overcrowding and of having exhausted all reasonable means of mitigating that overcrowding it shall establish a schedule of fees for interim facilities and request that the local city council or

[1] Government Code sections 65970-65981 as added by Statutes 1977, chapter 955 and amended by Statutes 1979, chapter 282, Statutes 1982, chapter 923, Statutes 1985, chapters 150, 836 and 1498, Statutes 1986, chapter 887 and Statutes 1994, chapter 1228. The School Facilities Act has also been non-substantively amended by Statutes 2006, chapter 538, but that statute has not been pled in this test claim.

board of supervisors adopt an ordinance imposing the fee. The Act also imposes requirements on cities and counties, but those requirements are not at issue in this test claim.

The AB 2926 fee program[2] authorizes school districts to directly impose developer fees for new school construction.[3] A district imposing developer fees pursuant to the AB 2926 program must comply with a number of fee study, notice, accounting, and other related requirements.

The Mitigation Fee Act[4] imposes a statutory nexus requirement on developer fees. Whenever establishing, imposing, or increasing a fee "as a condition of approval of a development project," the local agency imposing the fee must identify the purpose of the fee and the use to which it will be put. For purposes of the Mitigation Fee Act, "local agency" includes school districts.[5] The local agency must also specify the nexus between the development project (or class of project) and the improvement being financed.[6] It must further establish that the amount of funds being collected will not exceed that needed to pay for the improvement.[7] The Act also imposes certain accounting, disclosure, and other related requirements.

The plain language of the Mediation and Resolution of Land Use Disputes Law[8] authorizes the court to invite the parties to participate in mediation when a litigant brings an action in superior court to contest, among other things, developer fees imposed under the AB 2926 and the Mitigation Fee Act programs. It also authorizes the court to impose settlement conference requirements when the mediation is unsuccessful. The Mediation and Resolution of Land Use Disputes Law does not extend to fees imposed under the School Facilities Act.

Procedural History

This test claim was submitted to the Commission on June 27, 2003. Based on the filing date of June 27, 2003, the potential period of reimbursement for this test claim begins on July 1, 2001. The Commission received comments and responses to comments on the test claim from the claimant, the Department of Education (CDE), the Department of Finance (DOF), and the Office of Public School Construction (OPSC).

Positions of the Parties and Interested Parties

Claimant's Position

Claimant alleges that the test claim statutes require school districts to impose developer fees and comply with a number of related fee study, notice, accounting, mediation, settlement conference

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[2] Education Code sections 17620-17626 and Government Code sections 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, originally enacted by Statutes 1986, chapter 887 (AB 2926).

[3] Education Code section 17620 (former Government Code section 53080).

[4] Government Code sections 66000-66025.

[5] Government Code section 66000(c).

[6] Government Code section 66001.

[7] Government Code section 66005.

[8] Government Code sections 66030-66037.

and other related requirements. Claimant alleges further, that these activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution.

Department of Finance's Position

DOF states that a school district's collection of developer fees is a discretionary action of the district and is not state-mandated, therefore this test claim should be denied. Education Code section 17620 and Government Code section 65971 merely authorize school districts to levy developer fees and "the majority of the remaining statutes pertain to 'downstream' activities that would only apply if a school district chooses to collect developer fees."[9] (Emphasis in original.)

Department of Education's Position

CDE asserts that the test claim statutes do not impose a mandated program. Rather, "this is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities." Any requirements that apply to the establishment and collection of developer fees applicable only after districts elect to levy development fees, charges, or dedications.[10]

Department of Public School Construction's Position

OPSC states that the levying of developer fees is not a requirement to participate in the School Facility Program (SFP). OPSC asserts that many school districts do levy fees to assist with local matching share requirements; however, other funding sources are available for districts such as the passage of local school facility bonds. Government Code section 17556(d) precludes the Commission from finding that any of the provisions of the test claim impose costs mandated by the state because there is statutory authority to raise program costs through the passage of local bonds and other revenue sources, including developer fees.[11]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local agencies or school districts to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. 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 purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[12]

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[9] DOF, comments on the test claim, dated February 9, 2004, p. 1.

[10] CDE, comments on the test claim, August 11, 2003, p. 2.

[11] OPSC, comments on the test claim, August 11, 2003, p. 1.

[12] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

Claims

The following chart provides a brief summary of the claims and issues raised by the claimant, and staff's recommendation.

Subject	Description	Issues	Staff Recommendation
The School Facilities Act (Gov. Code, §§ 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980 and 65981)	Provides that if school districts make written findings of overcrowding and of having exhausted all reasonable means of mitigating the overcrowding, supported by clear and convincing evidence, they shall establish a schedule of fees for interim facilities and request that the local city council or board of supervisors adopt an ordinance imposing the fee.	Claimant alleges these code sections impose state-mandated costs.	*Approved*: If a school district can show by clear and convincing evidence that during the period of reimbursement for this test claim it has exhausted all reasonable means of mitigating the overcrowding and has thus been compelled to make the written findings that trigger the remaining requirements of the School Facilities Act, the district is entitled to reimbursement for any increased costs to the district.

AB 2926,[13] Mitigation Fee Act,[14] and the Mediation and Resolution of Land Use Disputes Law[15]	These Acts impose certain requirements on districts.	Claimant alleges these code sections impose state-mandated costs.	*Denied*: The required activities are downstream requirements of a school district's discretionary decisions to impose developer fees under AB 2926, to take action under the Mitigation Fee Act or to engage in mediation under the Mediation and Resolution of Land Use Disputes Law. Therefore, under the analysis in *Kern*, they do not impose state-mandated programs.

Analysis

The School Facilities Act requires school districts to notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that conditions of overcrowding exists in one or more of the attendance areas that impairs the normal functioning of the educational programs, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated by the district and no feasible method exists to reduce the overcrowding conditions. This notification triggers the requirement to perform accounting, reporting, and other related activities. Although the School Facilities Act provides fee authority, the authority is not provided to the school district and there is no authority for school districts to use the fee for the state-mandated activities. This program is new, since it was enacted in 1976, and it serves the governmental purpose of providing public education. Therefore, staff finds that the School Facilities Act imposes a reimbursable state-mandated program.

The activities required by the other test claim statutes are downstream requirements of a school district's discretionary decisions to impose developer fees under AB 2926, to take action under the Mitigation Fee Act, or to engage in mediation under the Mediation and Resolution of Land

[13] Education Code sections 17620-17626 and Government Code sections 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997 and 65998.

[14] Government Code sections 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024 and 66025.

[15] Government Code sections 66030, 66031, 66032, 66034 and 66037.

Use Disputes Law. Therefore, under the analysis in *Kern*, they do not impose state-mandated programs.

Conclusion

Staff finds that the School Facilities Act[16] imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2001 for school districts to perform the following activities:

- Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
  1) Conditions of overcrowding exist in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
  2) All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.
- Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.
- Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

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

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

[16] Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981 as added or amended by Statutes 1977, chapter 955, Statutes 1979, chapter 282, Statutes 1980, chapter 1354, Statutes 1981, chapter 201, Statutes 1982, chapter 923, Statutes 1983, chapter 1254, Statutes 1984, chapter 1062, Statutes 1985, chapter 1498, Statutes 1986, chapters 136 and 887, Statutes 1994, chapter 1228.

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

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

Staff also finds that the School Facilities Act imposes cost mandated by the state, which are not offset by fees imposed under the School Facilities Act.

Staff further finds that the remaining test claim statutes,[17] do not impose a state-mandated program for school districts within the meaning of article XIII B, section 6 of the California Constitution and are not reimbursable.

Staff Recommendation

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

[17] Education Code Sections 17620, 17621, 17622, 17623, 17624, 17625, and 17626 and Government Code Sections 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032, 66034, and 66037 as added, amended, or renumbered by Statutes 1983, chapter 921, Statutes 1986, chapters 685, 887, and 888, Statutes 1987, chapters 927, 1002, 1037, 1184 and 1346, Statutes 1988, chapters 29, 160, 418, 912 and 926, Statutes 1989, chapters 170, 1209 and 1217, Statutes 1990, chapters 633 and 1572, Statutes 1992, chapters, 169, 231, 487, 605 and 1354, Statutes 1993, chapters 589 and 1195, Statutes 1994, chapters 300, 686, and 983, Statutes 1995, chapter 686, Statutes 1996, chapters, 277, 549, 569, and 799, Statutes 1997, chapter 772, Statutes 1998, chapters 207, 407 and 689, Statutes 1999, chapters 300 and 858, Statutes 2000, chapter 135 and Statutes 2002, chapters 33 and 1016.

STAFF ANALYSIS

Claimant

Clovis Unified School District

Chronology

06/27/2003	Claimant, Clovis Unified School District, files the test claim with the Commission on State Mandates (Commission)[18]
07/10/2003	Commission staff issues a completeness review letter for the test claim and requests comments from state agencies
08/11/2003	The Office of Public School Construction (OPSC) submits comments on the test claim
08/11/2003	The Department of Education (CDE) submits comments on the test claim
07/29/2003	Department of Finance (DOF) requests a 30-day extension to file comments on the test claim
07/30/2003	Commission staff grants DOF an extension to August 11, 2003 to file comments on the test claim
09/13/2003	Claimant submits a response to OPSC's comments on test claim
10/28/2003	DOF requests an extension to February 2004 to file comments on test claim
11/07/2003	Commission staff grants DOF an extension to February 7, 2004 to file comments on the test claim
02/09/2004	DOF submits comments on the test claim
02/27/2004	Claimant submits a response to OPSC's comments on test claim

I. Introduction

This test claim addresses activities required as a condition of imposing developer fees to help pay for school facilities. There are three developer fee programs at issue in this test claim which are commonly referred to as: the School Facilities Act, AB 2926, and the Mitigation Fee Act. This test claim also addresses mediation and settlement proceedings that are authorized under the Mediation and Resolution of Land Use Disputes Law when a litigant brings an action in superior court to contest, among other things, actions taken or developer fees imposed under the AB 2926 and the Mitigation Fee Act programs. These programs are summarized below.

[18] Based on the filing date of June 27, 2003, the period of reimbursement for this test claim begins on July 1, 2001.

A. A Brief History of the Role of the State in School Facility Finance[19]

Prior to 1976, and before the test claim statutes were enacted, school facilities were funded entirely by local tax revenues with the assistance of state loans and land grants and private donations. The State Allocation Board (SAB) was created in 1947 and was directed by the Legislature to allocate state funds for school construction and renovation. Originally, the funds allocated were loans to the local districts. However, in 1978, the voters enacted Proposition 13 which fundamentally altered the ability of school districts to raise funds through local property tax revenues. Proposition 13 capped the ad valorem tax rate at one percent of its value, thereby dramatically reducing the income from property taxes, and eliminated the ability of school districts to levy additional special property taxes to pay off their facility indebtedness.

To assist the school districts in funding school facilities, the Legislature enacted state grant programs, most importantly the Leroy Greene State School Building Lease-Purchase Law and the Leroy F. Greene School Facilities Act of 1998, which established the state school facility program (SFP). The SFP provides grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The primary grants 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. To qualify for financial hardship funding, a district must demonstrate that: (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) it can show evidence of financial inability to contribute the required local matching funds.[20] The Legislature also provided school districts with several sources of statutory fee authority to raise the local match under the SFP and to provide for interim facilities until more permanent funding becomes available, including the School Facilities Act and the AB 2926 developer fee programs that are at issue in this claim.

B. The School Facilities Act

The School Facilities Act[21] provides authority for cities and counties to enact ordinances to require developers to pay fees for temporary school facilities. Under the Act, a school district is required to notify the city council or county board of supervisors if a school district finds, based on clear and convincing evidence, that conditions of overcrowding exist in one of the attendance areas that impairs the functioning of the educational programs, and that all reasonable methods

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[19] 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).

[20] *Ibid*.

[21] Government Code sections 65970-65981 as added by Statutes 1977, chapter 955 and amended by Statutes 1979, chapter 282, Statutes 1982, chapter 923, Statutes 1985, chapters 150, 836 and 1498, Statutes 1986, chapter 887 and Statutes 1994, chapter 1228. The School Facilities Act has also been non-substantively amended by Statutes 2006, chapter 538, but that statute has not been pled in this test claim.

of mitigating conditions of overcrowding have been evaluated by the district and no feasible method exists to reduce the overcrowding conditions. Government Code section 65971 provides, in pertinent part, the following:

> (a) The governing body of a school district…shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:
>
> (1) That conditions of overcrowding exist in one or more attendance areas within the district that will impair the normal functioning of educational programs, including the reason for the existence of those conditions.
>
> (2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

The Act defines "reasonable methods for mitigating conditions of overcrowding" to include "agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used."[22]

Government Code section 65971(b)(1) requires that the notice provided to the city council or county board of supervisors specify the mitigation measures considered by the school district and requires that the notice include a completed application to the Office of Public School Construction (OPSC) for the preliminary determination of eligibility under the Leroy F. Greene School Building Lease-Purchase Law of 1976. The local city council or board of supervisors may impose a fee, require the dedication of land, or both, to accommodate the interim facilities for the school district.

However, the value of the land and the amount of fees to be paid shall not exceed the amount necessary to pay five annual lease payments for the interim facilities.[23] If the ordinance adopted by the city council or county board of supervisors provides for the school district to recommend the amount of fees to be assessed against the developer, such recommendation is required to be provided to the city or county within 60-days following the initial permit for the development. If the district makes the findings and provides the notice, it must also submit a schedule, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available, to the local city council or county board of supervisors specifying how the district will use the fees, land, or both.[24] If two school districts operate in an attendance

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[22] Government Code section 65973(b).

[23] See Government Code section 65974. Note that funds collected pursuant to the School Facilities Act under a local ordinance, resolution, or regulation in existence prior to November 1, 1986 may be used for any construction or reconstruction purposes authorized under Government Code section 53080 and is not restricted to interim facilities.

[24] Government Code section 65976.

area where both schools have overcrowding, the city or county is required to enter into an agreement with both districts to determine the distribution of revenues from the fees. [25]

In addition, once a city or county approves a request imposing a developer fee, the statutes require school districts to perform accounting, reporting and other related requirements.

If the district receives approval of state grant funds for a school facility project under the Leroy F. Greene School Building Lease-Purchase Law of 1976, the district can use all or a portion of the fee or fair market value of the land dedicated under the School Facilities Act towards the district's share of costs for the project.[26] One year after receipt of an apportionment under the Leroy F. Greene School Building Lease-Purchase Law of 1976, the city or county is not permitted to levy a fee or require the dedication of land under the School Facilities Act unless a new finding of overcrowding is made by the school district. [27]

The purpose of the School Facilities Act "is to encourage local school districts to identify, and local governments to deal with, the effects of residential development on school facilities and to provide local governments with 'new and improved methods' to cope with the effects of such development 'within a reasonable period of time' and on a short-term basis."[28]

C. AB 2926 Developer Fees

In 1987, the Legislature enacted AB 2926 authorizing school districts to directly levy statutory developer fees on new residential and commercial/industrial developments.[29] Originally codified as Government Code sections 53080 and 65995, this legislation granted school districts the authority to levy fees to offset the impacts to school facilities from new development.

There are three levels of developer fees that may be levied under the AB 2926 program.[30] The Level I fee is assessed if the district conducts a fee justification study that establishes the connection between the development coming into the district and the assessment of fees to pay for the cost of the facilities needed to house future students. The maximum assessment for the amount of a Level I fee is required to be adjusted by the State Allocation Board (SAB) every two years by the change in the Class B construction cost index, as determined by the SAB at its January meeting.[31] Since 2008, those fees have been set at $2.97 per square foot for residential

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[25] Government Code section 65977.

[26] Government Code section 65975.

[27] Government Code section 65979.

[28] *Candid Enterprises, Inc. v. Grossmont Union High School Dist*. (1985) 39 Cal.3d 878, 889; Government Code section 65970.

[29] AB 2926, Statutes 1986, chapter 887. The code sections that make up the "AB 2926" program have been amended by several other statutes, including some of the other test claim statutes, but "AB 2926" is what the program is commonly called.

[30] AB 2926 authorized only Level I fees. However, the authority for Level II and III fees was added by SB 50 (Sts. 1998, ch. 407). For ease of discussion, this analysis refers to all three levels of fees as "AB 2926 fees" as they work in conjunction with one another and are found in the same part of the code.

[31] Government Code section 65995.

and $0.47 per square foot for industrial.[32] The Level II fee is assessed if a district makes a timely application to SAB for new construction funding, conducts a school facility needs analysis pursuant to Government Code Section 65995.6, and makes at least two of the hardship related findings listed in Government Code Section 65995.5(b)(3). The Level III fee is assessed when the state's SFP grant funds are exhausted; in that case, the district may impose a developer's fee up to 100 percent of the SFP new construction project cost.[33] Imposition of any of the three levels of fees triggers a number of fee study, notice, accounting, and other related requirements.

D. The Mitigation Fee Act

The Mitigation Fee Act imposes a statutory nexus requirement on the use of developer fees. Whenever establishing, imposing, or increasing a fee "as a condition of approval of a development project," the local agency imposing the fee must identify the purpose of the fee and the use to which it will be put. For purposes of the Mitigation Fee Act "local agency" includes school districts.[34] The local agency must also specify the nexus between the development project (or class of project) and the improvement being financed.[35] It must further establish that the amount of funds being collected will not exceed that needed to pay for the improvement.[36]

The U.S. Supreme Court holding in *Nollan v. California Coastal Commission*[37] established that the power to impose exactions on development is not without limits under the United States Constitution. The *Nollan* decision requires that government establish the existence of a "nexus" or link between the exaction and the governmental interest being advanced by that exaction. Once the adverse impacts of a project have been quantified, the local agency must document the relationship between the project and the need for the conditions which mitigate those impacts. This link may be forged by general plan policies or by special ordinances that are based upon studies or other objective evidence. Adoption of detailed findings, supported by evidence in the hearing record, is crucial to the enactment of a legally defensible fee ordinance. The Mitigation Fee Act imposes these requirements by statute. Likewise, amendments to the Act implement the requirements of other court decisions as follows: *Dolan v. City of Tigard*[38] (requiring rough proportionality between impact and mitigation) and *Ehrlich v. City of Culver City*[39] (requiring developers who wish to challenge a development fee on either statutory or constitutional grounds to do so under provisions of the Mitigation Fee Act).

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[32] See generally, Education Code section 17620, Government Code section 65995 and the Reports of the Executive Officer, State Allocation Board Meeting, January 30, 2008 (the last meeting at which the fees were increased) and January 26, 2011.

[33] Government Code section 65997.

[34] Government Code section 66000(c).

[35] Government Code section 66001.

[36] Government Code section 66005.

[37] *Nollan v. California Coastal Commission* (1987) 107 S.Ct. 3141 (*Nollan*).

[38] *Dolan v. City of Tigard* (1994) 114S.Ct. 2309.

[39] *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

Revenues resulting from such fees must be kept in a separate fund dedicated to the public improvements being financed and must not be commingled with other revenues and funds of the local agency.[40] In addition, five years after the first deposit into the account or fund, the local agency must make specific findings regarding any unexpended funds, whether those funds are committed to expenditure or not.[41] The same findings must continue to be made once every five years thereafter. If these findings are not made, the agency is required to refund the fees to the current owner of the affected property. Refunds may be made by direct payment, temporary suspension of fees, or "other reasonable means," at the discretion of the local agency.

In its findings, the agency must:

(1) Identify the purpose to which the fee is put;

(2) Demonstrate a reasonable relationship between the fee and purpose for which it is charged;

(3) Identify all sources and amounts of funding anticipated to be used to finance the incomplete improvements; and

(4) Designate the approximate dates on which the above funding is expected to be deposited into the appropriate account or fund.[42]

When sufficient funds have been amassed to complete the financing of public improvements for which impact fees have been collected (as determined in the annual fiscal report required under section 66006), but the improvements have not been completed, the agency must either identify "an approximate date by which the construction of the public improvement will be commenced" or refund the unexpended portion of the funds to the current record owners of the affected properties on a prorated basis.[43]

Fees collected for an improvement related to a development project must be deposited in a separate fund or account and are to be expended "solely for the purpose for which the fee was collected." Local agencies are further required to make a yearly public financial disclosure for each of its fee accounts for all development projects, including residential, commercial, and industrial. Within 180 days of the end of each fiscal year, the agency must make the following information available:

(1) A brief description of the type of fee in the account;

(2) The amount of the fee;

(3) The beginning and ending balance of the account;

(4) The fees collected that year and the interest earned;

(5) An identification of each public improvement for which the fees were expended and the amount of the expenditures for each improvement;

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[40] Government Code section 66006.

[41] Government Code section 66001.

[42] *Ibid.*

[43] *Ibid.*

(6) An identification of an approximate date by which construction of the improvement will commence if the local agency determines that sufficient funds have been collected to complete financing of an incomplete public improvement;

(7) A description of each inter-fund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, the date on which any loan will be repaid, and the rate of interest to be returned to the account; and

(8) The amount of money refunded under section 66001.[44]

The public agency must review the fiscal report at its next scheduled public hearing after public release of the report. Section 66006 specifies the requirements for the 15-day advance public notice.

The Mitigation Fee Act also requires local agencies to perform further public notice, hearing, accounting, and auditing activities, and allows judicial challenges to newly adopted or increased fees.[45]

E. The Mediation and Resolution of Land Use Disputes Law

The Mediation and Resolution of Land Use Disputes Law provides the courts with authority to invite parties to legal challenges to the developer fees imposed under the AB 2926 or to actions taken under the Mitigation Fee Act to participate in mediation and, if the mediation is unsuccessful, to order a settlement conference between the parties.[46]

II. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant alleges that the test claim statutes require school districts to impose developer fees and comply with a number of related process, notice, public hearing, and accounting requirements. Claimant alleges further that these activities are new and subject to reimbursement under article XIII B, section 6 of the California Constitution. More specifically, claimant alleges the following programs are new and reimbursable:

- The School Facilities Act (Gov. Code § 65970-65981), which requires school districts, under specified circumstances to:
    - Make written findings of:
        - Overcrowding; and
        - Exhaustion of reasonable methods of mitigating the overcrowding;
    - Establish a schedule of fees for interim facilities;
    - Request that the local city council or board of supervisors adopt an ordinance imposing the fee;

[44] Government Code section 66006.

[45] Government Code sections 66007, 66008, 66016, 66017, 66020, 66022, and 66023.

[46] Government Code sections 66030-66037.

- Assist the city council or board of supervisors in determining whether there are specific overriding fiscal, economic, social, or environmental factors thereby justifying the approval of the development without imposing the fee; and
- Comply with a number of related process, notice, public hearing, and accounting requirements.

- AB 2926, which claimant alleges requires school districts to:
  - Apply to the State for grant funding under the SFP program;
  - Directly impose developer fees for new school construction. If a district imposes developer fees pursuant to the AB 2926 program, it must comply with a number of requirements; and
  - Comply with a number of related process, notice, public hearing, and accounting requirements.
- The Mitigation Fee Act which claimant alleges requires school districts to:
  - Identify the purpose of the developer fee and the use to which it will be put;
  - Prepare a fee study to:
    - Specify the nexus between the development project (or class of project) and the improvement being financed through the fee;
    - Establish that the amount of funds being collected will not exceed that needed to pay for the improvement; and
  - Comply with certain accounting, disclosure and other related requirements.
- The Mediation and Resolution of Land Use Disputes Law, which claimant alleges requires school districts to:
  - Participate in mediation when a litigant brings an action in superior court to contest developer fees imposed and actions taken by a school district under the AB 2926 and the Mitigation Fee Act programs;
  - Participate in settlement conference requirements when the mediation is unsuccessful; and
  - Comply with a number of related requirements.[47]

Claimant also alleges the test claim statutes generally require school districts to "establish policies and procedures" to implement each of the laws discussed above.[48]

B. Department of Finance's Position

DOF states that a school district's collection of developer fees is a discretionary action of the district and is not state-mandated; therefore this test claim should be denied. Education Code section 17620 and Government Code section 65971 merely authorize school districts to levy

[47] Claimant, test claim, p.p. 119-153.

[48] *Id*. at 128.

developer fees and "the majority of the remaining statutes pertain to 'downstream' activities that would only apply if a school district chooses to collect developer fees."[49] (Emphasis in original.)

C. Department of Education's Position

CDE asserts that the test claim statutes do not impose a mandated program. Rather, "this is a funding option available to local school boards, whereby they can elect to establish developer fees to pay for the construction or re-construction of facilities." Any requirements that apply to the establishment and collection of developer fees are applicable only after districts elect to levy development fees, charges, or dedications.[50]

D. Office of Public School Construction's Position

OPSC states that the levying of developer fees is not a requirement to participate in the SFP. OPSC asserts that many school districts do levy fees to assist with local matching share requirements; however, other funding sources are available for districts such as the passage of local school facility bonds. Government Code section 17556(d) precludes the Commission from finding that any of the provisions of the test claim impose costs mandated by the state because there is statutory authority to raise program costs through the passage of local bonds and other revenue sources, including developer fees.[51]

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 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."[52] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[53]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[54]

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[49] DOF, comments on the test claim, dated February 9, 2004, p. 1.

[50] CDE, comments on the test claim, August 11, 2003, p. 2.

[51] OPSC, comments on the test claim, August 11, 2003, p. 1.

[52] *County of San Diego*, *supra*, 15 Cal.4th 68, 81.

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

[54] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[55]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[56]
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[57]

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.[58] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[59] 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."[60]

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[55] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

[56] *San Diego Unified*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[57] *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; Government Code sections 17514 and 17556.

[58] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

[59] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[60] *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.

Issue 1: Do the test claim statutes mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?

A. The School Facilities Act[61] imposes a state-mandated new program or higher level of service for school districts within the meaning of article XIII B, section 6 of the California Constitution when specified conditions are met.

1. Requirements of the School Facilities Act

The School Facilities Act requires school districts to notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that conditions of overcrowding exists in one or more of the attendance areas that impairs the normal functioning of the educational programs, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated by the district and no feasible method exists to reduce the overcrowding conditions. Government Code section 65971 provides, in pertinent part, the following:

> (a) The governing body of a school district…*shall* notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:
>
> (1) That conditions of overcrowding exist in one or more attendance areas within the district that will impair the normal functioning of educational programs, including the reason for the existence of those conditions.
>
> (2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist. (Emphasis added.)

The Act defines "reasonable methods for mitigating conditions of overcrowding" to include "agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used."[62]

Based upon the plain language of this statute, the school district is required to (i.e. "shall") notify the local city council or county board of supervisors if findings of overcrowding are made and are based on clear and convincing evidence. Clear and convincing evidence is a very high standard and is defined as follows:

> "Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth

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[61] Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981 as added or amended by Statutes 1977, chapter 955, Statutes 1979, chapter 282, Statutes 1980, chapter 1354, Statutes 1981, chapter 201, Statutes 1982, chapter 923, Statutes 1983, chapter 1254, Statutes 1984, chapter 1062, Statutes 1985, chapter 1498, Statutes 1986, chapters 136 and 887, Statutes 1994, chapter 1228.

[62] Government Code section 65973(b).

> of the fact[s] for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence.[63]

Once the findings are made by the school district, the Act imposes several additional requirements on the school district.

Government Code section 65971(b)(1) requires that the school district, in its notice to the city council or county board of supervisors, specify the mitigation measures considered by the district and further requires the district to include a completed application to OPSC for the preliminary determination of eligibility under the SFP state grant program. Section 65971(b)(1) specifies in pertinent part:

> The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code). . . .

Subdivision (b)(1) also provides times for action and a requirement for the findings to be made available to the public for 60 days after the notice is received by the city or county before the city or county takes action.

Staff finds further that the School Facilities Act does not require school districts to complete the SFP application for grant funds, since participation in the SFP program is not a state-mandated activity.[64] What is required by this provision, however, are the costs of copying the application and providing it to the city council or board of supervisors.

If the local city council or board of supervisors concurs in the school district's finding, it may impose a fee on the developer, require the dedication of land, or both, to accommodate the interim facilities for the district. However the value of the land and the amount of fees to be paid cannot exceed the amount necessary to pay five annual lease payments for the interim facilities.[65]

If the district makes the findings and provides the notice, the plain language of Government Code section 65976 states that it must also submit a schedule to the city council or county board of supervisors explaining how the district will use the fees, land, or both. The schedule must

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[63] CA BAJI 2.62, *Burden of Proof and Clear and Convincing Evidence*.

[64] See the Commission's Statement of Decision in *School Facilities Funding Requirements* (02-TC-43). Note that though participation in the SFP is not a state-mandated program, it is one of the many options available to school district's for funding school facilities and is the primary state grant program. A school district cannot find by clear and convincing evidence that "*all feasible methods*" of mitigating the overcrowded have been exhausted if it has not even applied to a grant program which may pay for 50-100 percent of construction costs for new school facilities.

[65] Government Code sections 65974. Note that funds collected pursuant to the School Facilities Act under a local ordinance, resolution or regulation in existence prior to November 1, 1986 may be used for any construction or reconstruction purposes authorized under Government Code section 53080 and is not restricted to interim facilities.

identify the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule may be submitted with the notice or any time before the city council or county board of supervisors makes a decision to require the dedication of land or payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

Government Code section 65981 states that if the ordinance adopted by the city council or county board of supervisors provides for the school district to recommend the amount of fees to be assessed, such recommendation is required to be provided to the city or county by the school district within 60 days following the initial permit for the development. If two school districts operate in an attendance area where both schools have overcrowding, the city or county is required to enter into an agreement with both districts to determine the distribution of revenues from the fees.[66]

Once the city or county approves the payment of fees, the dedication of land, or both, additional requirements on school districts are triggered. Specifically, Government Code section 65978 requires the school district to:

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

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council. During the time that the report has not been filed as prescribed, there is a waiver of the requirement to pay fees or dedicate land. If overcrowding conditions no longer exist, the city or county must cease levying a fee or requiring the dedication of any land.

If the school district receives approval of a school facility project under the Leroy F. Greene School Building Lease-Purchase Law of 1976 and has collected fees or dedication of land pursuant to the School Facilities Act, Government Code section 65975 states that the district "may use all or a portion of the fee" and "may use the fair market value of the land" to "provide all or a portion of its 10 percent of the school project share of costs for the project.[67] Staff finds that the plain language of Government Code section 65975 is permissive and does not require any activities. A school district "may" use all or a portion of the fees or fair market value of land dedicated under the School Facilities Act program to meet its share of costs. There is nothing in the statutory language that legally compels the claimant to apply these fees to its share of costs

[66] Government Code section 65977.

[67] Government Code section 65975.

for permanent facilities under the SFP and there is no evidence in the record that claimant has been practically compelled to do so.

Government Code section 65979 provides that "one year after receipt of an apportionment under the Leroy F. Greene School Building Lease-Purchase Law of 1976 for the construction of a school, the city or county shall not be permitted to levy a fee or require the dedication of land under the School Facilities Act or under an agreement with builders of residential development, unless a new finding of overcrowding is made by the school district.[68] Staff finds that this provision is prohibitive, but does not require school districts to engage in any activity.

Accordingly, the School Facilities Act imposes the following requirements on school districts:

- Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
    - Conditions of overcrowding exists in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
    - All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exists.
- The notice of findings shall specify the reason for the existence of the overcrowding conditions and the mitigation measures considered. Copying and providing a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 shall also be provided with the notice of findings.[69]
- Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.[70]

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

- Make a recommendation regarding the amount of fees to be assessed, within 60 days following the initial permit for the development, when required by the city council or county board of supervisors;[71] and
- Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, enter into an agreement with the

[68] Government Code section 65979.

[69] Government Code section 65971(a).

[70] Government Code section 65976.

[71] Government Code section 65981.

city or county for the purpose of determining the distribution of revenues to both school districts from the fees levied pursuant to the School Facilities Act.[72]

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

- Maintain a separate account for any fees paid; and
- File a report by October 15 of each year with the city council or county board of supervisors which specifies:
    - The balance in the account at the end of the previous fiscal year;
    - The facilities leased, purchased, or constructed;
    - The dedication of land during the previous fiscal year; and
    - Which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist.[73]

2. <u>The requirements of the School Facilities Act impose a state-mandated new program or higher level of service on school districts.</u>

Unlike other programs for school facilities that authorize school districts to apply for state grant funds, the plain language of Government Code section 65971 mandates school districts to provide notice to the city or county when new development results in overcrowding for one or more school attendance areas and the school district has exhausted all feasible methods of reducing the overcrowding. These feasible methods, as stated in section 65973, include "agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used." They may also include transferring students to other schools in the district, double session kindergarten programs, district boundary changes, adding portable classrooms, or other modernization projects using funding from one of state grant programs including the Leroy F. Greene State School Building Lease-Purchase Law of 1976, using multi-track year round scheduling, and reopening closed school sites. However, when all methods have been exhausted and the overcrowding conditions remain, and a school district finds there is clear and convincing evidence of these facts, school districts are mandated by the state to provide notice to the city or county and to participate in the program.

It has been recognized that later enacted statutes, including the AB 2926 program, provide better options for schools seeking to address overcrowding issues which may make the School Facilities Act Program unnecessary. The Governor's Office of Planning and Research has determined that "[b]ecause AB 2926 allows for the funding of permanent facilities, it has generally supplanted the use of the School Facilities Act."[74] Nonetheless, staff finds, based on the plain language of the statute, that the School Facilities Act constitutes a state-mandated program for school districts when, due to new development, it finds clear and convincing

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[72] Government Code section 65977.

[73] Government Code section 65978.

[74] Governor's Office of Planning and Research, *A Planner's Guide to Financing Public Improvements*, June, 1997, Chapter 5.

evidence of overcrowding that cannot be mitigated without the use of the temporary developer fees.

Staff further finds that the state-mandated activities are newly required, and create a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The activities serve the governmental function of providing a service to the public. As declared by the Legislature, the School Facilities Act was enacted because new housing developments frequently cause conditions of overcrowding in existing school facilities that cannot be alleviated under existing laws within a reasonable period of time.[75] The courts have recognized that programs relating to public education provide a service to the public.

> …although numerous private schools exist, education in our society is considered to be a peculiarly governmental function. . . Further, public education is administered by local agencies to provide a service to the public. Thus public education constitutes a "program" within the meaning of Section 6.[76]

B. The remaining test claim statutes governing the AB 2926 program, the Mitigation Fee Act, and the Mediation and Resolution of Land Use Disputes Law, do not impose a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Because school districts have many options for funding construction and the option of choosing not to engage in construction projects, staff finds that the remaining test claim statutes do not impose a state-mandated program.

1. School districts make the decision to build or modernize school facilities and are not mandated by the state to do so.

The AB 2926 program grants school districts the authority to levy fees to offset the impacts to school facilities from new development. As explained in the background, there are three levels of developer fees that may be levied under the program. The Level I fee is assessed if the district conducts a fee justification study that establishes the connection between the development coming into the district and the assessment of fees to pay for the cost of the facilities needed to house future students. The Level II fee is assessed if a district makes a timely application to SAB for new construction funding, conducts a school facility needs analysis pursuant to Government Code Section 65995.6, and makes at least two of the hardship-related findings listed in Government Code Section 65995.5(b)(3). The Level III fee is assessed when the state's SFP grant funds are exhausted; in that case, the district may impose a developer's fee up to 100 percent of the SFP new construction project cost. Imposition of any of the three levels of fees triggers a number of fee study, notice, accounting and other related requirements.

Under the Mitigation Fee Act, a school district is required to identify the purpose of a fee levied and the use of the fee whenever a school district establishes, imposes, or increases a fee "as a condition of approval of a development project." If a school district decides to impose developer fees, it is required to comply with the Mitigation Fee Act and the other downstream requirements of these programs.

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[75] Government Code section 65970.

[76] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

As more fully discussed below, the school district is not legally compelled by the state to construct or modernize school facilities, or to impose developer fees for the purpose of funding the construction. The school district makes those choices.[77]

In comments filed February 27, 2004, claimant argues that "constructing new school facilities is not optional."[78] In support of this contention, claimant cites to *Butt v. State of California*[79] 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."

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.[80] 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.[81]

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.[82] The governing boards of K-12 school districts may hold and convey property for the use and benefit of the school district.[83] Governing boards of K-12 school districts have also been given broad authority

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[77] The nexus and fee study requirements imposed by the Mitigation Fee Act are arguably required by the United States Constitution. The U.S. Supreme Court decision in *Nollan v. California Coastal Commission* requires that government establish the existence of a "nexus" or link between an exaction and the governmental interest being advanced by that exaction. The Mitigation Fee Act implements this constitutional requirement. Likewise, amendments to the Act implement the requirements of the *Dolan v. City of Tigard* (1994) 114S.Ct. 2309 (requirement for rough proportionality between impact and mitigation required) and *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854 (developers who wish to challenge a development fee on either statutory or constitutional grounds must do so under provisions of the Mitigation Fee Act).

However, it is unnecessary for this analysis to reach that issue since the requirements of the Act are triggered by the school district's discretionary decision to impose developer fees.

[78] Claimant's response to DOF comments, February 27, 2004, p. 2.

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

[80] See *Hayes v. Commission on State Mandates*, *supra*, 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*); and *Hall v. Taft* (1956) 47 Cal.2d 177, 179.

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

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

[83] Education Code section 35162.

by the Legislature to decide when to build and maintain a schoolhouse and, "when desirable, may establish additional schools in the district."[84] 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."[85]

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.[86] 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."[87] 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.[88]

Thus, under state law, the decision to construct or modernize school facilities lies with the governing boards of school districts and is not required by the state.

a) School districts are authorized, but not required, to levy developer fees for school facilities.

Moreover, school districts are not required by state law to levy developer fees under AB 2926 and comply with the downstream requirements imposed by that program and the Mitigation Fee Act. The plain language of Education Code section 17620(a)(1), a statute within the AB 2926 program, provides that: "[t]he governing board of any school district *is authorized* to levy a fee,

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[84] Education Code sections 17340 and 17342.

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

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

[87] *Id.* p. 338.

[88] *Id*. p. 337.

charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities." (Emphasis added.) The exercise of the school district's discretion to levy fees triggers the requirements of these programs.

In addition, school districts have several options when funding school facility projects. A school district can seek grant funding from the state through the SFP, which is funded through state bonds or it may issue local bonds pursuant to one of several local bond acts. Schools may rely on a combination of state and local bond funding for facilities. If a school district decides to seek state grant funding through the SFP, the district must come up with funding for its share of cost. The district can do that in a number of ways including issuing local bonds, creating a Mello-Roos district, or imposing developer fees under the test claim statutes at issue here.

b) The AB 2926 and Mitigation Fee programs do not impose state-mandated activities on school districts.

Staff finds that the test claim statutes do not impose state-mandated activities on school districts. Based on the court's analysis in *Department of Finance v. Commission on State Mandates* (*Kern*) and the law described above, whether a district imposes a developer fee pursuant to the AB 2926 program or takes action under the Mitigation Fee Act is completely at the discretion of the school district.

In *Kern*, the Supreme Court analyzed the issue of legal compulsion by examining the nature of the claimants' participation in the underlying programs themselves. The court ruled that even if participation in the programs in question was legally compelled, the claimants were not eligible for reimbursement because they were "free at all relevant times to use funds provided by the state for that program to pay required program expenses. . ."[89]

The Court also addressed the issue of whether a district that incurs costs as a result of participating in an optional government funding program is eligible for reimbursement. The court held that there was no "practical" compulsion to participate in these programs because a district that chooses to not participate in the program or ceases participation in a program does not face "certain and severe…penalties" such as "double… taxation" or other "draconian" consequences.[90] The court rested its analysis on the premise that local entities possessing discretion will make the choices that are ultimately the most beneficial for the parties involved:

> 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

[89] *Id*. at 731.

[90] *Id*. at 754.

> decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)[91]

The holding in *Kern* applies here. School districts have complete discretion in determining whether to build or modernize school facilities and whether to impose developer fees. There is nothing in the body of law making up the AB 2926 program or the Mitigation Fee Act that requires a district to impose a developer fee. Therefore, staff finds that the test claim statutes do not legally compel school districts to participate in these programs.

Furthermore, there is no evidence that school districts are practically compelled to comply with these programs. School districts are not subjected to any penalties for not participating in these programs. Nothing in the law imposes a consequence or penalty for choosing to not impose developer fees. The imposition of such fees is but a means that school districts have to generate revenues for school facilities.

Accordingly, staff finds that the AB 2926 and Mitigation Fee programs do not impose a state-mandated program within the meaning of article XIII B, section 6, and are not reimbursable.

2. The Mediation and Resolution of Land Use Disputes Law does not impose state-mandated activities.

The Mediation and Resolution of Land Use Disputes Law[92] provides the courts with authority to invite parties in litigation over the imposition of developer fees under the AB 2926 and Mitigation Fee Act programs to participate in mediation and, if the mediation is unsuccessful, to order a settlement conference between the parties.

The mediation and settlement conference activities authorized by Government Code sections 66031 and 66034 were addressed in another test claim brought by the claimant, which was recently denied by the Commission. In 03-TC-17 (CEQA), sections 66031 and 66034 as amended by Statutes 1994, chapter 300 and Statutes 1996, chapter 799 were pled as the same mediation and settlement provisions may be applicable to challenges to governmental decisions under CEQA. In the CEQA test claim, the Commission found that any requirements imposed by these sections are the downstream requirements of the district's discretionary decision to approve a project. Likewise here, staff finds that any requirements imposed by these code sections are the downstream requirements of the district's discretionary decision to impose a developer fee.

Only when the district makes the discretionary decision to impose AB 2926 developer fees or take action pursuant to the Mitigation Fee Act is the Mediation and Resolution of Land Use Disputes Law triggered.[93] The Mediation and Resolution of Land Use Disputes Law does not apply to fees imposed under the School Facilities Act.[94] Even when this law is triggered, the court is only authorized to "invite" the parties to participate in mediation. The law specifies:

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[91] *Id*. at 753.

[92] Government Code sections 66030-66037.

[93] Government Code sections 66031(a)(1),(4) and (5), note that this Act applies to other types of decisions as well, which are not at issue in this test claim.

[94] *Ibid*.

> Within five days after the deadline for the respondent's reply, the court may invite the parties to consider mediation. If the parties do not select a mutually agreeable moderator and notify the court within 30 days, the action shall proceed.[95]

Thus, if the parties choose not to select a moderator, the action proceeds in court. Therefore, the parties are not required to engage in mediation and staff finds the Mediation and Resolution of Land Use Disputes Law does not impose any requirements on school districts.

If mediation is entered into:

> a. All time limits for the action are tolled; and
>
> b. At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance for the purpose of providing information needed by the Office to prepare its report to the Legislature.[96]
>
> If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.[97]

These additional activities are imposed by the court, not the state. Moreover, the purpose of this program is to reduce the delay, uncertainty, and cost that litigation adds to the cost of development by authorizing alternative dispute resolution in lieu of a costly court process.[98] School districts are free to remain in litigation, if they choose.

Based on the analysis above, staff finds that the Mediation and Resolution of Land Use Disputes Law does not qualify as a state-mandated program within the meaning of article XIII B, section 6.[99]

Issue 2: Does the School Facilities Act impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

The final issue is whether the state-mandated activities impose costs mandated by the state,[100] and whether any statutory exceptions listed in Government Code section 17556 apply to the test claim. Government Code section 17514 defines costs mandated by the state as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

Government Code section 17564 requires reimbursement claims to exceed $1,000 to be eligible for reimbursement. Claimant asserts that it has costs exceeding one-thousand dollars per year.[101]

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[95] Government Code sections 66031(b) and (d).

[96] Government Code sections 66032 and 66033.

[97] Government Code section 66034.

[98] Government Code sections 66030 (a)(3) and (b).

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

[100] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[101] Declaration of William McGuire, June 23, 2003, p. 17 (Exhibit A).

The Commission, however, cannot find "costs mandated by the state" within the meaning of Government Code section 17514 if any exceptions in Government Code section 17556 apply, as discussed below. Claimant asserts that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.[102]

The School Facilities Act authorizes the imposition of fees. If the fees levied from this program are intended to pay for the mandated activities and are sufficient to cover the costs the mandated activities, Government Code section 17556(d) bars reimbursement.

Government Code section 65974(a)(3) provides the following: "The land or fees, or both, transferred to a school district shall be used *only* for the purpose of providing interim elementary or high school classroom and related facilities." (Emphasis added.) Based on the plain language of the statute and the lack of any legislative history indicating otherwise, staff finds that the fee authority granted by the School Facilities Act is not specifically intended to fund the mandated activities, which are administrative in nature. Moreover, the statute does not authorize the use of fees imposed under the School Facilities Act for administrative purposes since fees may be used "only for the purpose of providing interim elementary or high school classroom and related facilities." Therefore, staff finds School Facilities Act imposes costs mandated by the state, which are not offset by fees imposed under the School Facilities Act.

CONCLUSION

Staff finds that the School Facilities Act[103] imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2001 for school districts to perform the following activities:

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

[102] Claimant, test claim, *supra*, p. 154 (Exhibit A).

[103] Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981 as added or amended by Statutes 1977, chapter 955, Statutes 1979, chapter 282, Statutes 1980, chapter 1354, Statutes 1981, chapter 201, Statutes 1982, chapter 923, Statutes 1983, chapter 1254, Statutes 1984, chapter 1062, Statutes 1985, chapter 1498, Statutes 1986, chapters 136 and 887, Statutes 1994, chapter 1228.

city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

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

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

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

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

Staff further finds that the remaining test claim statutes[104] do not impose a state-mandated program for school districts within the meaning of article XIII B, section 6 of the California Constitution and are not reimbursable.

Recommendation

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

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[104] Education Code Sections 17620, 17621, 17622, 17623, 17624, 17625, and 17626 and Government Code Sections 65995, 65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998, 66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018, 66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032, 66034, and 66037 as added, amended or renumbered by Statutes 1983, chapter 921, Statutes 1986, chapters 685, 887, and 888, Statutes 1987, chapters 927, 1002, 1037, 1184 and 1346, Statutes 1988, chapters 29, 160, 418, 912 and 926, Statutes 1989, chapters 170, 1209 and 1217, Statutes 1990, chapters 633 and 1572, Statutes 1992, chapters, 169, 231, 487, 605 and 1354, Statutes 1993, chapters 589 and 1195, Statutes 1994, chapters 300, 686, and 983, Statutes 1995, chapter 686, Statutes 1996, chapters, 277, 549, 569, and 799, Statutes 1997, chapter 772, Statutes 1998, chapters 207, 407 and 689, Statutes 1999, chapters 300 and 858, Statutes 2000, chapter 135 and Statutes 2002, chapters 33 and 1016.

705 P.2d 876
39 Cal.3d 878, 705 P.2d 876, 218 Cal.Rptr. 303, 27 Ed. Law Rep. 950
(Cite as: 39 Cal.3d 878, 705 P.2d 876, 218 Cal.Rptr. 303)

Supreme Court of California,
In Bank.

CANDID ENTERPRISES, INC., Plaintiff and Respondent,
v.
GROSSMONT UNION HIGH SCHOOL DISTRICT, et al., Defendants and Appellants.

L.A. 31877.
Sept. 26, 1985.

Developer of residential subdivision filed action for writ of mandamus to order school district's governing board to repay school impact fees assessed against developer. The Superior Court, San Diego County, Joseph A. Kilgariff, J., ordered refund of the fees, and school district appealed. The Supreme Court, Mosk, J., held that: (1) School Facilities Act does not preempt local governments from imposing school-impact fees on developers to finance permanent school facilities, and (2) school district's imposition of school-impact fees on developer to finance permanent school facility was related to legitimate purpose of requiring developers to mitigate overcrowding in schools caused or aggravated by development of residential subdivision, and thus, did not deny developer equal protection of law.

Reversed.

Opinion, 197 Cal.Rptr. 429, vacated.

West Headnotes

[1] Mandamus 250 154(4)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k154 Petition or Complaint, or Other Application
250k154(4) k. Right of petitioner, and authority, duty, or power of respondent, in general. Most Cited Cases

School district's demurrer was not sustainable in action by developer of residential subdivision for writ of mandamus to order school district's governing board to repay school impact fees assessed against developer, even though writ of administrative mandate did not lie because school board was not required by law to grant developer hearing on request, where writ of ordinary mandate was available. West's Ann.Cal.C.C.P. §§ 1086, 1094.5(a); West's Ann.Cal.Gov.Code § 65913.5(e).

[2] Mandamus 250 3(2.1)

250 Mandamus
250I Nature and Grounds in General
250k3 Existence and Adequacy of Other Remedy in General
250k3(2) Remedy at Law
250k3(2.1) k. In general. Most Cited Cases
(Formerly 250k3(2))

Mandate requires that there be no plain, speedy, and adequate remedy, in the ordinary course of law. West's Ann.Cal.C.C.P. §§ 1086, 1094.5(a).

[3] Mandamus 250 87

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k87 k. Proceedings to procure and grant or revoke licenses, certificates, and permits. Most Cited Cases

Developer of residential subdivision who sought refund from school district's governing board of school impact fees assessed against developer was entitled to writ of ordinary mandate, where action on contract for refund of fees paid in the lease from payment of remainder was inadequate because there were no grounds on which to allege breach or to seek recision, no statutory action for refund than existed, and action for declaratory relief was inappropriate insofar as developer was attacking local legislation.

West's Ann.Cal.C.C.P. §§ 1086, 1094.5(a).

[4] Mandamus 250 69

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k69 k. Legislative powers. Most Cited Cases

Writ of mandate may be used to challenge validity of legislative measure.

[5] Counties 104 21.5

104 Counties
104II Government
104II(A) Organization and Powers in General
104k21.5 k. Governmental powers in general. Most Cited Cases
(Formerly 104k211/2)

Municipal Corporations 268 589

268 Municipal Corporations
268X Police Power and Regulations
268X(A) Delegation, Extent, and Exercise of Power
268k589 k. Nature and scope of power of municipality. Most Cited Cases

Under police power granted by Constitution, counties and cities have plenary authority to govern, subject only to limitation that they exercise power within their territorial limits and subordinate to state law. West's Ann.Cal.Const. Art. 11, § 7.

[6] Municipal Corporations 268 111(2)

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k111 Validity in General
268k111(2) k. Conformity to constitutional and statutory provisions in general. Most Cited Cases

Otherwise valid local legislation which conflicts with state law is preempted by state law and is void. West's Ann.Cal.Const. Art. 11, § 7.

[7] Municipal Corporations 268 111(2)

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k111 Validity in General
268k111(2) k. Conformity to constitutional and statutory provisions in general. Most Cited Cases

Otherwise valid local legislation conflicts with state law where local legislation duplicates, contradicts, or enters area fully occupied by general law, either expressly or by legislative implication. West's Ann.Cal.Const. Art. 11, § 7.

[8] Municipal Corporations 268 111(2)

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k111 Validity in General
268k111(2) k. Conformity to constitutional and statutory provisions in general. Most Cited Cases

In determining whether Legislature has preempted by implication to the exclusion of local regulation, Supreme Court must look to whole purpose and scope of legislative scheme, employing three tests: whether subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively matter of state concern; whether subject matter has been partially covered by general law couched in such terms as to indicate clearly that paramount state concern will not tolerate further or additional local action; or whether subject matter has been partially covered by general law, and subject is of such nature that adverse affect of local ordinance on transient citizens of state outweighs possible benefit to municipality.

[9] Municipal Corporations 268 111(2)

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k111 Validity in General
268k111(2) k. Conformity to constitutional and statutory provisions in general. Most Cited Cases

Preemption by implication of legislative intent may not be found where Legislature has expressed its intent to permit local regulations. West's Ann.Cal.Const. Art. 11, § 7.

[10] Zoning and Planning 414 1033

414 Zoning and Planning
414I In General
414k1019 Concurrent or Conflicting Regulations; Preemption
414k1033 k. Other particular cases. Most Cited Cases
(Formerly 414k14)

School Facilities Act [West's Ann.Cal.Gov.Code § 65970 et seq.] which permits and recognizes local measures imposing school-impact fees on developers of new residential developments to finance new school facilities, does not impliedly preempt local regulations.

[11] Zoning and Planning 414 1009

414 Zoning and Planning
414I In General
414k1008 Constitutional and Statutory Provisions
414k1009 k. In general. Most Cited Cases
(Formerly 414k7.1, 414k7)

Purpose of School Facilities Act [West's Ann.Cal.Gov.Code § 65970 et seq.] is to encourage local school districts to identify, and local governments to deal with, effects of residential development on school facilities and to provide local government with new and improved methods to cope with effects of such development within reasonable period of time and on short-term basis. West's Ann.Cal.Gov.Code §§ 65970–65971.

[12] Zoning and Planning 414 1382(4)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(4) k. Fees, bonds and in lieu payments. Most Cited Cases
(Formerly 414k382.4)

School Facilities Act provision [West's Ann.Cal.Gov.Code § 65974] restricting school-impact fees that may be imposed to no more than the amount necessary to pay five annual lease payments for interim facility, is attempt on part of Legislature to ensure that local governments do not indefinitely avoid problem of construction of permanent facilities by agreeing to long-term-use of temporary facilities, but is not limitation on authority of local government to impose school-impact fees to provide permanent facilities.

[13] Zoning and Planning 414 1033

414 Zoning and Planning
414I In General
414k1019 Concurrent or Conflicting Regulations; Preemption
414k1033 k. Other particular cases. Most Cited Cases
(Formerly 414k14)

Zoning and Planning 414 1382(4)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(4) k. Fees, bonds and in lieu payments. Most Cited Cases
(Formerly 414k382.4)

West's Ann.Cal.Gov.Code § 65980, which expressly limits scope of School Facilities Act [West's Ann.Cal.Gov.Code § 65970 et seq.] to temporary school facilities, indicates Legislature's intent that

local governments use fees authorized by the Act as short-term solution, but does not indicate that local governments be prohibited from developing and implementing long-term solutions.

[14] Zoning and Planning 414 1033

414 Zoning and Planning
414I In General
414k1019 Concurrent or Conflicting Regulations; Preemption
414k1033 k. Other particular cases. Most Cited Cases
(Formerly 414k14)

Fact that West's Ann.Cal.Gov.Code § 65979 prohibits exactions of school-impact fees from developers for purpose of building permanent school facilities where locality has received apportionment for permanent facilities pursuant to Green Act [West's Ann.Cal.Educ.Code, § 17700 et seq.] does not mean that Legislature intended School Facilities Act to preempt local governments from assessing developers for fees to build permanent school facilities under other circumstances.

[15] Constitutional Law 92 1012

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1006 Particular Issues and Applications
92k1012 k. Taxation and revenue legislation. Most Cited Cases
(Formerly 92k48(4.1), 92k48(4))

Constitutional Law 92 3065

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)6 Levels of Scrutiny
92k3063 Particular Rights
92k3065 k. Economic or social regulation in general. Most Cited Cases
(Formerly 92k213.1(2))

"Basic and conventional standard," under which economic regulation imposing school-impact fees must be reviewed, invests legislation with presumption of constitutionality and requires merely that distinction drawn by challenged measure bears some rational relationship to conceivable legitimate state purpose.

[16] Constitutional Law 92 1040

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1032 Particular Issues and Applications
92k1040 k. Equal protection. Most Cited Cases
(Formerly 92k48(4.1), 92k48(4))

Under conventional standard of review to determine whether legislation violates equal protection, burden of demonstrating invalidity of classification rests squarely upon the party who assails legislation. U.S.C.A. Const.Amend. 14.

[17] Constitutional Law 92 3614

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)8 Education
92k3611 Elementary and Secondary Education
92k3614 k. School funding and financing; taxation. Most Cited Cases
(Formerly 92k242.2(2.1), 92k242.2(2))

Zoning and Planning 414 1382(4)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(4) k. Fees, bonds and in lieu payments. Most Cited Cases

(Formerly 414k382.4, 92k242.2(2.1))

Assessment of school-impact fees to finance permanent school facility against developer of residential subdivision who entered into secured agreement to obtain school-availability letter did not deny developer equal protection of law, even though developments started after date school district stopped assessing such fees would be able to avoid fees altogether, where assessment was reasonable in that developers who were expected to cause or aggravate overcrowding in schools were required to mitigate overcrowding in schools, and others were not. U.S.C.A. Const.Amend. 14.

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MOSK, Justice.

The major question we must decide in this case concerns what are commonly referred to as "school-impact fees"—i.e., fees that local ***881** governments impose on real property development to cover the costs of ****879** constructing and maintaining school facilities attributable to such development. The *****306** precise question is whether the School Facilities Act (sometimes hereafter the Act) (Gov.Code, § 65970 et seq.) [FN1]—which encourages local school boards to identify and local governments to deal with the problem of overcrowding, and to that end permits the imposition of school-impact fees to finance certain temporary facilities—preempts local governments from imposing such fees to finance both temporary and permanent facilities. We answer this question in the negative, and therefore reverse the judgment.

FN1. Unless otherwise noted, all statutory references are to the Government Code.

I

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." (Cal.Building Industry Assn., Financing School Facilities (Apr. 1983) p. 3 (hereafter Financing School Facilities).) 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 (Ed.Code, § 16000 et seq.), they financed the construction and maintenance of school facilities mainly through the issuance of local bonds repaid from real property taxes.

After the *Serrano* decision (5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 124) and to the present day, local government has 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.

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—such as those at issue here—in order to make new development cover the costs of school facilities attributable to ***882** it. (See, e.g., *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court* (1974) 13 Cal.3d 225, 118 Cal.Rptr. 158, 529 P.2d 582.)

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." (Financing School Facilities, supra, at p. 4; see Ed.Code, § 17786 ["the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities"].) 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 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. (Financing School Facilities, supra, at pp. 4, 14.)

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 ****880** into school facilities; in fiscal year 1981–1982, for example, only 3.6 percent went *****307** for such facilities. (Financing School Facilities, supra, at pp. 3, 4, 6.) The Legislature has developed "no long-term, comprehensive solution to the acute and chronic facilities financing needs of local school districts," but rather has enacted merely "a series of stop-gap, patchwork measures." (Id. at p. 6.) Moreover, because of, among other things, the state budget crisis in the early 1980's and other factors the Legislature has not adequately funded such measures as it has enacted—indeed, "[i]n the past several years, state-supported construction finance has waned...." (Id. at pp. 6, 16.) Thus, although the burden of financing school facilities appears too heavy for some localities to bear, they continue to bear it in large part alone.

II

In 1974 the Board of Supervisors of San Diego County adopted in the form relevant here a land-use policy, designated Policy I–43 (sometimes hereafter the Policy), to help assure orderly growth in the face of widespread and rapid development and a consequent general increase in population. In the Policy, the board of supervisors described the basic problem: ***883** "In many cases, ... the required public services have not ... been installed by the time the development shows a need. The result has been that residents in the newly developed areas have been inadequately served with schools." It then went on to frame a solution: "Before giving approval to development proposals involving a special use permit or a rezoning, ... the proponent of the development proposal ... [must] make certain provisions, in conjunction with appropriate governmental agencies, to insure: [¶] That the proponent of the development present evidence satisfactory to the Planning Commission, at the time of its consideration of the matter, and to the Board of Supervisors at the time of its consideration of the matter that public school services will in fact be provided concurrent with the need." As evidence that such services and facilities would be provided, the county accepted so-called "school-availability" letters from the local school districts.

In 1977 respondents Grossmont Union High School District (the District) and its governing board (the Board) recognized that developments being proposed at that time might cause overcrowding, and sent letters to that effect to the county. On the basis of such letters, the planning commission concluded that the District could not in fact provide adequate school facilities concurrent with the need created by the proposed developments, and accordingly permitted few if any such developments to proceed.

In the fall of 1977 the predecessor of petitioner Candid Enterprises, Inc. expressed its willingness to enter into an agreement with the District to permit its development to proceed: it would agree to pay fees for school facilities and the District would issue a school-availability letter to the county indicating that such facilities would be provided.[FN2] The District approved the agreement in principle and, in order to facilitate it and others like it, adopted Revised Policy FF, which allowed for assessment, under Policy I–43, of school-impact fees from developers, to be used for temporary or permanent facilities. In the spring of 1978 the District entered into an agreement with petitioner's predecessor secured by the real property under development. By its terms the developer agreed to pay

the established fees at the time it sought building permits, and the District issued a school-availability letter advising the county of the agreement and of its ability to provide adequate school facilities through use of the fees.

> FN2. The president of petitioner and its predecessor is one and the same person.

Meanwhile, the School Facilities Act had become effective on January 1, 1978. Under the Act, cities and counties were authorized to enact ordinances to require developers to pay fees for temporary school facilities. ***884** (§ 65974.) In the spring of 1978 the board of supervisors enacted such an ****881** ordinance, designated Ordinance 5120. Shortly thereafter, in order to facilitate *****308** agreements with developers for the payment of fees for temporary facilities under the Act, the District adopted a resolution finding that conditions of overcrowding existed and that it lacked financial resources to provide additional needed school facilities.

In 1978 and 1979 the District assessed some developers for fees for temporary facilities pursuant to the School Facilities Act and Ordinance 5120; with others it entered into secured agreements for the payment of fees for temporary or permanent facilities, in lieu of School Facilities Act fees, pursuant to Policy I–43 and Revised Policy FF. Because of a districtwide decline in enrollment, in February 1980 the District discontinued collecting School Facilities Act fees. At the same time it also discontinued entering into Policy I–43 secured agreements, although it stated its intent to continue to monitor proposed developments, enter into such agreements when necessary, and collect fees under existing agreements in order to provide adequate facilities concurrent with the need that the subject developments were expected to create.

Petitioner, which had purchased a three-lot condominium project from its predecessor, sought building permits late in 1980. In early 1981 it paid under protest $23,500 in Policy I–43 school-impact fees pursuant to the secured agreement between the District and its predecessor. Petitioner then unsuccessfully sought a refund by a letter to the District. Next it requested to speak to the Board on the matter, and was granted permission. At the meeting petitioner asked that in view of declining districtwide enrollment, the Board refund the fees paid under protest and cancel its secured agreement and all other similar agreements. The Board found that the District (1) discontinued collecting School Facilities Act fees and entering into Policy I–43 secured agreements "since it was projected that funds committed under existing agreements would be sufficient to mitigate future impact[,]" (2) "reserved the right to require the commitment of fees from future developments which promised to upset this condition of balance[,]" and (3) never had "any intention to disregard existing agreements, since the housing from projects covered by those agreements will adversely impact the District at their time of completion." The Board then denied petitioner's request.

[1][2][3][4] Petitioner initiated this proceeding for a writ of mandate pursuant to Code of Civil Procedure sections 1094.5 (administrative mandate) and 1084 (ordinary mandate). Respondents filed a demurrer and an answer. After a hearing the trial court overruled the demurrer and ordered that mandate issue. ***885** From the ensuing judgment respondents appeal, arguing the substantive point that the imposition of Policy I–43 school-impact fees was not invalid on either preemption or equal protection grounds. As we explain below, we find their position meritorious.[FN3]

> FN3. Respondents also press the procedural point that their demurrer should have been sustained. This argument, however, is untenable. Although the writ of administrative mandate does not lie because the Board was not required by law to grant petitioner a hearing on its request (Code Civ.Proc., § 1094.5, subd. (a); *Court House Plaza Co. v. City of Palo Alto* (1981) 117 Cal.App.3d 871, 880, 173 Cal.Rptr. 161), the writ of ordinary mandate is available. Mandate requires that there be no "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ.Proc., § 1086.) There was no such remedy here: an action on the contract for refund of fees paid and release from payment of the remainder was inadequate because there were no grounds on which to allege a breach or to seek rescission; no statutory action for a refund then existed, although one now does (§ 65913.5, subd. (e)); and an action for declaratory relief was inappropriate insofar as petitioner was attacking the local

legislation as applied (*Mobil Oil Corp. v. Superior Court* (1976) 59 Cal.App.3d 293, 307, 130 Cal.Rptr. 814). The writ of mandate may of course be used, as it is used here, to challenge the validity of a legislative measure. (E.g., *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 2, 96 Cal.Rptr. 697, 488 P.2d 1.)

III

Respondents first contend that the imposition of Policy I–43 school-impact fees is *****309 **882** not preempted by the School Facilities Act and is accordingly valid. Petitioner concedes as it must that the imposition of school-impact fees is generally valid. (See *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court*, supra, 13 Cal.3d 225, 232, fn. 6, 118 Cal.Rptr. 158, 529 P.2d 582.) Respondents proceed to argue successfully that the local legislation is not preempted by the Act on the ground that there is no conflict.

[5] Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the "police power [of a county or city] under this provision ... is as broad as the police power exercisable by the Legislature itself." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140, 130 Cal.Rptr. 465, 550 P.2d 1001.)

[6][7] If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484, 204 Cal.Rptr. 897, 683 P.2d 1150; *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807, 100 Cal.Rptr. 609, 494 P.2d 681.) A conflict exists if the local legislation " 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " (Citations omitted.) (*People ex rel. Deukmejian v. County of Mendocino*, supra, 36 Cal.3d at p. 484, 204 Cal.Rptr. 897, 683 P.2d 1150.)

***886** Respondents argue and petitioner concedes that Policy I–43 school-impact fees do not contradict or duplicate the provisions of the School Facilities Act. Respondents further assert that such fees have not entered an area fully occupied by state law. They are persuasive.

First, the area of financing of school facilities needed by new development has not been expressly occupied by state law. The Legislature has not voiced such an intent in any of its enactments, and petitioner admits as much.

[8] Second, the area has not been impliedly occupied by state law. "In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.' " (*People ex rel. Deukmejian v. County of Mendocino*, supra, 36 Cal.3d 476, 485, 204 Cal.Rptr. 897, 683 P.2d 1150, quoting from *In re Hubbard* (1964) 62 Cal.2d 119, 128, 41 Cal.Rptr. 393, 396 P.2d 809; accord, *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 708, 209 Cal.Rptr. 682, 693 P.2d 261 and cases cited.)

Petitioner concedes, as it must, that the imposition of Policy I–43 school-impact fees does not satisfy the third test, and respondents successfully urge that it satisfies neither of the other two.[FN4]

FN4. How the relevant field occupied by the allegedly preemptive state legislation is defined is often crucial to the result: "If the definition is narrow, preemption is circumscribed; if it is broad, the sweep of preemption is expanded." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 27–28, 61 Cal.Rptr. 618; see *Gregory v. City of San Juan Capistrano* (1983) 142 Cal.App.3d 72, 84, 191 Cal.Rptr. 47.) The issue of definition, however, is not crucial here. Whether the School Facilities Act is held to occupy the narrow field of the financing of temporary

> facilities (as it evidently should be) or the broad field of the financing of all facilities (as it evidently should not be) is of no consequence in the case before us. As we shall explain, the Act recognizes and in fact permits local action, and thereby fails to occupy either field to the exclusion of local legislation.

*****310 **883** First, the subject matter of the local measure—the financing of the construction of both temporary and permanent school facilities to meet the demands imposed by new development—has not been so fully and completely***887** covered by general law as to clearly indicate that it has become exclusively a matter of state concern.

Taken by itself, the School Facilities Act does not even purport to deal with the construction of permanent facilities (see §§ 65970, subd. (e), 65974), and does not fully and completely cover the construction of temporary facilities. The Act recognizes alternative, local financing arrangements: "One year after receipt of any apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 ... for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter *or pursuant to any other school facilities financing arrangement such district may have with builders of residential development*, to levy any fee or to require the dedication of any land within the attendance area of the district." (§ 65979, italics added.) The Act, moreover, clearly permits such arrangements. The school district is required to notify the local legislative body if it finds that "(a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exist [*sic*]...." (§ 65971.) The Act goes on to define "reasonable methods for mitigating conditions of overcrowding": they "shall include, *but are not limited to*, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used." (§ 65973, subd. (b), italics added.)

Even if we consider the School Facilities Act together with other related state legislation, we come to the same conclusion: the subject matter of this local measure has not been fully and completely covered by state law. Although, as petitioner correctly argues, there are several state and local programs that provide funding for the construction of school facilities, [FN5] the general situation may properly be described in the words already quoted of one of petitioner's principal authorities: "Since the passage of Proposition 13, financing for school construction and facility maintenance has been a series of stop-gap, patchwork measures. There still exists no long-term, comprehensive solution to the acute and chronic facilities financing needs of local school districts." (Financing School Facilities, supra, at p. 6.)

> FN5. These include, for example, the School Facilities Act, the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter the Greene Act) (Ed.Code, § 17700 et seq.), the Mello-Roos Community Facilities Act of 1982 (§ 53311 et seq.), and the New Schools Relief Act of 1979 (Ed.Code, § 39050 et seq.).

888** The evident absence of implied preemptive intent in the terms of the School Facilities Act—whether we consider it by itself or with other related legislation—is confirmed by the failure of the Legislature to fully cover the financing of school facilities. First, not all school districts in need of funds for permanent facilities can qualify to receive them under the Greene Act. (See Ed.Code, § 17740.) Second, for a variety of reasons the Legislature has failed to provide adequate funding for even such "stop-gap, patchwork" programs as currently exist. In such circumstances, to construe alternative, local arrangements such as that before us to be preempted would severely impede local governments and school districts in carrying out their responsibilities. It would also frustrate the intent of the Legislature in enacting the School Facilities Act: "Adequate school facilities should be available for children residing in new residential developments." (§ 65970, subd. (a).) Thus, under this test*884 ***311** —i.e., whether the subject matter of the local measure has been so fully covered by state law as to clearly indicate that it has become exclusively a matter of state concern—the Act is shown not to be preemptive.[FN6]

FN6. We do not mean to imply that the Legislature may not occupy a field unless it appropriates the funds necessary to carry out its intent. We also note that in some cases the "inadequacy" of state funding may prove to be too speculative or subjective a criterion on which to base a conclusion that the Legislature has not intended to preempt local action.

Second, the subject matter of this local measure has not been partially covered by state law couched in such terms as to indicate clearly that a paramount state concern will not tolerate additional local action. The evidence on which we base our conclusion is compelling: the School Facilities Act, as we have explained, unmistakably recognizes and permits local action. Thus, under this test too the Act is shown not to be preemptive.

[9][10] To summarize: "Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (*People ex rel. Deukmejian v. County of Mendocino*, supra, 36 Cal.3d 476, 485, 204 Cal.Rptr. 897, 683 P.2d 1150.) Accordingly, we conclude that the School Facilities Act, because it both permits and recognizes local measures such as this, does not have implied preemptive effect.

To avoid this conclusion, petitioner relies heavily on an opinion by the Attorney General. (62 Ops.Cal.Atty.Gen. 601 (1979).) Among the questions addressed in the opinion is whether the School Facilities Act preempts the imposition of school-impact fees by local government to provide permanent facilities. (Id. at p. 601.) To this the Attorney General answered ***889** yes. (Id. at pp. 605–609.) The conclusion is erroneous, however, because the analysis is faulty.

[11][12] First, the opinion reasons that the Act restricts the fees that may be imposed to no more than " 'the amount necessary to pay five annual lease payments for the interim facilities,' " and that such a restriction "would be meaningless if a city council or board of supervisors could exact additional developer fees for permanent school facilities." (Id. at p. 607, quoting § 65974, subd. (d).) This position might be sound if the Act were intended to limit the authority of local government to make such exactions, but it is not. The purpose of the Act is to encourage local school districts to identify, and local governments to deal with, the effects of residential development on school facilities and to provide local government with "new and improved methods" to cope with the effects of such development "within a reasonable period of time" and on a short-term basis. (See §§ 65970–65971.) Accordingly, the restriction on the amount of fees that may be imposed is properly to be construed as an attempt on the part of the Legislature to ensure that local governments not indefinitely avoid the problem of the construction of permanent facilities by agreeing to the long-term use of temporary facilities.

[13][14] Second, the opinion reasons that the 1979 addition of section 65980, which expressly limits the scope of the Act to temporary facilities, when as initially enacted it "was arguably broad enough to cover permanent facilities [as well,] ... indicated an intent to restrict the amount and purpose of the fees to be collected from developers." (62 Ops.Cal.Atty.Gen., supra, at p. 607.) This position is undermined, however, by the conclusions we reach above: the Legislature evidently intended that local governments use fees authorized by the Act as a short-term solution—*not* that local governments be prohibited from developing and implementing long-term solutions. It is also undermined by the language of section 65979, which was added to the Act at the same time as section 65980: "One year after receipt of an apportionment pursuant to the [Greene Act] ... for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter *or pursuant****312 ****885 to any other school facilities financing arrangement such district may have with builders of residential development*, to levy any fee or to require the dedication of any land within the attendance area of the district." (Italics added.) Thus, section 65979 expressly recognizes "other school facilities financing arrangement[s]" between local government and developers, and prohibits exactions pursuant to such arrangements *only* when the locality has received an apportionment for permanent facilities pursuant to the Greene Act. Had the Legislature intended the School ***890** Facilities Act to preempt such "school facilities financing arrangement[s]," the reference to them would have been meaningless.

Third, the opinion reasons by analogy to the Subdivision Map Act that "the express grant of au-

thority to impose school impact fees and dedications upon developers under [the Act], with strict limitations as to amount, evidences an intent by the Legislature to preempt the field to the exclusion of local regulation." (62 Ops.Cal.Atty.Gen., supra, at p. 608.) But even if the opinion is correct in concluding that the intent of the Legislature in the Subdivision Map Act is to prohibit local government from making exactions that the Act does not expressly authorize, it errs in reading such an intent into the School Facilities Act. Here the Legislature recognizes (§ 65979) and in fact permits (§§ 65971, 65973, subd. (b)) local legislation, and has accordingly indicated its clear intent that the "new and improved methods of financing for interim school facilities" that the Act provides are merely supplementary to, and not preemptive of, local action (§ 65970, subd. (e)).

IV

Respondents' other contention is that the imposition of Policy I–43 school-impact fees does not violate the equal protection clause and is accordingly valid. This claim too is successful.

[15][16] The imposition of school-impact fees is an undisputed and indisputable instance of economic regulation. As such, we must review it under "the basic and conventional standard," which "invests legislation ... with a presumption of constitutionality and 'requir[es] merely that distinctions drawn by a challenged [measure] bear some rational relationship to a conceivable legitimate state purpose.' " (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 16, 112 Cal.Rptr. 786, 520 P.2d 10; see *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court*, supra, 13 Cal.3d 225, 232–233, 118 Cal.Rptr. 158, 529 P.2d 582.) As petitioner implicitly concedes, we may not review the challenged local measure under any stricter standard: developers do not constitute a "suspect class," and development is not a "fundamental interest" (see *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 328, 170 Cal.Rptr. 685). Under the conventional standard, "the burden of demonstrating the invalidity of a classification ... rests squarely upon *the party who assails it.*" (*D'Amico v. Board of Medical Examiners*, supra, 11 Cal.3d at p. 17, 112 Cal.Rptr. 786, 520 P.2d 10, italics in original.) Petitioner has failed to carry this burden.

[17] If, as respondents argue and we are inclined to hold, the class of similarly situated persons comprises all developers who have entered into a secured ***891** agreement to obtain a school-availability letter, then no discrimination at all appears: the Board has collected fees as they have become due and has stated its intent to continue to collect them. But even if, as petitioner responds, the class comprises all developers who are currently building in the district, still no unlawful discrimination emerges. The Board entered into secured agreements covering certain developments proposed in 1978 and 1979 because it expected them to cause or aggravate overcrowding in neighboring schools. The Board has not entered into such agreements covering developments proposed subsequently because it has not expected them to have such an adverse effect. Thus if developers currently building in the district are treated differently, such difference*****313 **886** is reasonable and therefore lawful: developers who are expected to cause or aggravate overcrowding are required to mitigate it, others are not.

The judgment is reversed.[FN7]

FN7. Because of our disposition we do not reach the question whether petitioner waived its right to the fees it paid under protest by accepting the benefits of the agreement with the District.

BIRD, C.J., and KAUS, BROUSSARD, REYNOSO, GRODIN and LUCAS, JJ., concur.

Cal.,1985.
Candid Enterprises, Inc. v. Grossmont Union High School Dist.
39 Cal.3d 878, 705 P.2d 876, 218 Cal.Rptr. 303, 27 Ed. Law Rep. 950

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Supreme Court of the United States
Florence DOLAN, Petitioner
v.
CITY OF TIGARD.

No. 93-518.
Argued March 23, 1994.
Decided June 24, 1994.

Landowner petitioned for judicial review of decision of Oregon Land Use Board of Appeals, affirming conditions placed by city on development of commercial property. The Court of Appeals, 113 Or.App. 162, 832 P.2d 853, affirmed, and landowner again appealed. The Oregon Supreme Court affirmed, 317 Or. 110, 854 P.2d 437, and certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that: (1) city's requirement that landowner dedicate portion of her property lying within flood plain for improvement of storm drainage system and property adjacent to flood plain as bicycle/pedestrian pathway, as condition for building permit allowing expansion of landowner's commercial property, had nexus with legitimate public purposes; (2) findings relied upon by city to require landowner to dedicate portion of her property in flood plain as public greenway, did not show required reasonable relationship necessary to satisfy requirements of Fifth Amendment; and (3) city failed to meet its burden of demonstrating that additional number of vehicle and bicycle trips generated by proposed commercial development reasonably related to city's requirement of dedication of pedestrian/bicycle pathway easement.

Reversed and remanded.

Justice Stevens filed dissenting opinion in which Justices Blackmun and Ginsburg joined.

Justice Souter filed dissenting opinion.

West Headnotes

[1] Eminent Domain 148 1

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k1 k. Nature and source of power. Most Cited Cases

One of the principal purposes of the takings clause of the Fifth Amendment is to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by public as a whole. U.S.C.A. Const.Amends. 5, 14.

[2] Eminent Domain 148 2.10(1)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(1) k. In general. Most Cited Cases
(Formerly 148k2(1.2))

Zoning and Planning 414 1055

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k1055 k. Deprivation of property. Most Cited Cases
(Formerly 414k40)

Land use regulation does not effect a taking if it substantially advances legitimate state interest and does not deny owner economically viable use of his or her land. U.S.C.A. Const.Amends. 5, 14.

[3] Eminent Domain 148 2.1

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.1 k. In general. Most Cited Cases
(Formerly 148k2(1.1))

Eminent Domain 148 2.10(1)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(1) k. In general. Most Cited Cases
(Formerly 148k2(1.2))

Under doctrine of "unconstitutional conditions," government may not require person to give up constitutional right in exchange for discretionary benefit conferred by government where property sought has little or no relationship to the benefit. U.S.C.A. Const.Amends. 5, 14.

[4] Eminent Domain 148 2.10(7)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(7) k. Exactions and conditions. Most Cited Cases
(Formerly 148k2(1.2))

In evaluating landowner's claim that city's requirement that she dedicate a portion of her property as condition of further development was unconstitutional taking, Supreme Court was first required to determine whether "essential nexus" existed between legitimate state interest and permit condition exacted by city; if Court found that nexus existed, it was then required to decide required degree of connection between exactions and projected impact of proposed development. U.S.C.A. Const.Amends. 5, 14.

[5] Eminent Domain 148 2.10(7)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(7) k. Exactions and conditions. Most Cited Cases
(Formerly 148k2(1.2))

Zoning and Planning 414 1382(3)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(3) k. Conveyance or dedication. Most Cited Cases
(Formerly 414k382.3)

City's requirement that landowner dedicate portion of her property lying within flood plain for improvement of storm drainage system and property adjacent to flood plain as bicycle/pedestrian pathway, as condition for building permit allowing expansion of landowner's commercial property, had nexus with legitimate public purposes of preventing flooding along creek and reducing traffic congestion in city's central business district, for purposes of Fifth Amendment takings analysis. U.S.C.A. Const.Amends. 5, 14.

[6] Eminent Domain 148 2.10(7)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(7) k. Exactions and conditions. Most Cited Cases
(Formerly 148k2(1.2))

Zoning and Planning 414 1382(3)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(3) k. Conveyance or dedi-

cation. Most Cited Cases
(Formerly 414k382.3)

"Rough proportionality" test applied in determining whether degree of exactions required by city's building permit conditions bore required relationship to projected impact on proposed development to satisfy takings clause of Fifth Amendment; no precise mathematical calculation was required, but city was required to make some sort of individualized determination that required dedication was related both in nature and extent to impact of proposed development. U.S.C.A. Const.Amends. 5, 14.

[7] Constitutional Law 92 1067

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1067 k. Bill of Rights or Declaration of Rights. Most Cited Cases
(Formerly 92k82(6.1))

Simply denominating governmental interest as "business regulation" does not immunize it from constitutional challenge on grounds that it violates provision of the Bill of Rights. U.S.C.A. Const.Amends. 1-10.

[8] Eminent Domain 148 56

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k54 Exercise of Delegated Power
148k56 k. Necessity for appropriation. Most Cited Cases

Zoning and Planning 414 1429

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(B) Proceedings on Permits, Certificates, or Approvals
414k1424 Determination
414k1429 k. Findings, reasons, conclusions, minutes or records. Most Cited Cases
(Formerly 414k439)

Findings relied upon by city to require landowner to dedicate portion of her property in flood plain as public greenway, as condition for constructing new commercial building, did not show required reasonable relationship between flood plain easement and landowner's proposed new building necessary to satisfy requirement of Fifth Amendment "takings" clause; although city found that paved parking lot that was included in proposed development would increase storm water flow from property, city never stated why public greenway, as opposed to private one, was required in interest of flood control. U.S.C.A. Const.Amends. 5, 14.

[9] Zoning and Planning 414 1382(3)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(3) k. Conveyance or dedication. Most Cited Cases
(Formerly 414k382.3)

City failed to meet its burden of demonstrating that additional number of vehicle and bicycle trips generated by proposed commercial development were reasonably related to city's requirement of dedication of pedestrian/bicycle pathway easement as condition of granting building permit; city simply found that creation of pathway could offset some of the traffic demand and lessen increase in traffic congestion, but did not find that pathway was likely to offset traffic demand. U.S.C.A. Const.Amends. 5, 14.

[10] Zoning and Planning 414 1382(3)

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1379 Maps, Plats, and Plans; Subdivisions
414k1382 Conditions and Agreements
414k1382(3) k. Conveyance or dedication. Most Cited Cases
(Formerly 414k382.3)

Dedications for streets, sidewalks, and other public ways are generally reasonable exactions to avoid excessive congestion from proposed property

use. U.S.C.A. Const.Amends. 5, 14.

****2311** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The City Planning Commission of respondent city conditioned approval of petitioner Dolan's application to expand her store and pave her parking lot upon her compliance with dedication of land (1) for a public greenway along Fanno Creek to minimize flooding that would be exacerbated by the increases in impervious surfaces associated with her development and (2) for a pedestrian/bicycle pathway intended to relieve traffic congestion in the city's Central Business District. She appealed the commission's denial of her request for variances from these standards to the Land Use Board of Appeals (LUBA), alleging that the land dedication requirements were not related to the proposed development and therefore constituted an uncompensated taking of her property under the Fifth Amendment. LUBA found a reasonable relationship between (1) the development and the requirement to dedicate land for a greenway, since the larger building and paved lot would increase the impervious surfaces and thus the runoff into the creek, and (2) alleviating the impact of increased traffic from the development and facilitating the provision of a pathway as an alternative means of transportation. Both the Oregon Court of Appeals and the Oregon Supreme Court affirmed.

Held: The city's dedication requirements constitute an uncompensated taking of property. Pp. 2316-2322.

(a) Under the well-settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no ****2312** relationship to the benefit. In evaluating Dolan's claim, it must be determined whether an "essential nexus" exists between a legitimate state interest and the permit condition. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837, 107 S.Ct. 3141, 3148, 97 L.Ed.2d 677. If one does, then it must be decided whether the degree of the exactions demanded by the permit conditions bears the required relationship to the projected impact of the proposed development. *Id.*, at 834, 107 S.Ct. at 3147. Pp. 2316-2317.

(b) Preventing flooding along Fanno Creek and reducing traffic congestion in the district are legitimate public purposes; and a nexus exists between the first purpose and limiting development within the creek's ***375** floodplain and between the second purpose and providing for alternative means of transportation. Pp. 2317-2318.

(c) In deciding the second question-whether the city's findings are constitutionally sufficient to justify the conditions imposed on Dolan's permit-the necessary connection required by the Fifth Amendment is "rough proportionality." No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development's impact. This is essentially the "reasonable relationship" test adopted by the majority of the state courts. Pp. 2318-2320.

(d) The findings upon which the city relies do not show the required reasonable relationship between the floodplain easement and Dolan's proposed building. The Community Development Code already required that Dolan leave 15% of her property as open space, and the undeveloped floodplain would have nearly satisfied that requirement. However, the city has never said why a public, as opposed to a private, greenway is required in the interest of flood control. The difference to Dolan is the loss of her ability to exclude others from her property, yet the city has not attempted to make any individualized determination to support this part of its request. The city has also not met its burden of demonstrating that the additional number of vehicle and bicycle trips generated by Dolan's development reasonably relates to the city's requirement for a dedication of the pathway easement. The city must quantify its finding beyond a conclusory statement that the dedication could offset some of the traffic demand generated by the development. Pp. 2319-2322.

317 Ore. 110, 854 P.2d 437 (1993), reversed and remanded.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN and GINSBURG, JJ., joined, *post*, p. 2322. SOUTER, J., filed a dissenting opinion, *post*, p. 2330.
David B. Smith, Tigard, OR, for petitioner.

Timothy V. Ramis, Portland, OR, for respondent.

***376** Edwin S. Kneedler, Washington, DC, for U.S., as amicus curiae by special leave of the Court.

For U.S. Supreme Court briefs, see:1994 WL 249537 (Pet.Brief)1994 WL 123754 (Resp.Brief)1994 WL 82042 (Reply.Brief)1994 WL 106731 (Resp.Supp.Brief)

***377** Chief Justice REHNQUIST delivered the opinion of the Court.

Petitioner challenges the decision of the Oregon Supreme Court which held that the city of Tigard could condition the approval of her building permit on the dedication of a portion of her property for flood control and traffic improvements. 317 Ore. 110, 854 P.2d 437 (1993). We granted certiorari to resolve a question left open by our decision in *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), of what is the required degree of connection between the exactions imposed by the city and the projected impacts of the proposed development.

****2313** I

The State of Oregon enacted a comprehensive land use management program in 1973. Ore.Rev.Stat. §§ 197.005-197.860 (1991). The program required all Oregon cities and counties to adopt new comprehensive land use plans that were consistent with the statewide planning goals. §§ 197.175(1), 197.250. The plans are implemented by land use regulations which are part of an integrated hierarchy of legally binding goals, plans, and regulations. §§ 197.175, 197.175(2)(b). Pursuant to the State's requirements, the city of Tigard, a community of some 30,000 residents on the southwest edge of Portland, developed a comprehensive plan and codified it in its Community Development Code (CDC). The CDC requires property owners in the area zoned Central Business District to comply with a 15% open space and landscaping requirement, which limits total site coverage, including all structures and paved parking, to 85% of the parcel. CDC, ch. 18.66, App. to Pet. for Cert. G-16 to G-17. After the completion of a transportation study that identified ***378** congestion in the Central Business District as a particular problem, the city adopted a plan for a pedestrian/bicycle pathway intended to encourage alternatives to automobile transportation for short trips. The CDC requires that new development facilitate this plan by dedicating land for pedestrian pathways where provided for in the pedestrian/bicycle pathway plan.[FN1]

> FN1. CDC § 18.86.040.A.1.b provides: "The development shall facilitate pedestrian/bicycle circulation if the site is located on a street with designated bikepaths or adjacent to a designated greenway/open space/park. Specific items to be addressed [include]: (i) Provision of efficient, convenient and continuous pedestrian and bicycle transit circulation systems, linking developments by requiring dedication and construction of pedestrian and bikepaths identified in the comprehensive plan. If direct connections cannot be made, require that funds in the amount of the construction cost be deposited into an account for the purpose of constructing paths." App. to Brief for Respondent B-33 to B-34.

The city also adopted a Master Drainage Plan (Drainage Plan). The Drainage Plan noted that flooding occurred in several areas along Fanno Creek, including areas near petitioner's property. Record, Doc. No. F, ch. 2, pp. 2-5 to 2-8; 4-2 to 4-6; Figure 4-1. The Drainage Plan also established that the increase in impervious surfaces associated with continued urbanization would exacerbate these flooding problems. To combat these risks, the Drainage Plan suggested a series of improvements to the Fanno Creek Basin, including channel excavation in the area next to petitioner's property. App. to Pet. for Cert. G-13, G-38. Other recommendations included ensuring that the floodplain remains free of structures and that it be preserved as greenways to minimize flood damage to structures. Record, Doc. No. F, ch. 5, pp. 5-16 to 5-21. The Drainage Plan concluded that the cost of these improvements should be shared based on both direct and indirect benefits, with property owners along the waterways paying more due to the direct benefit that they would receive. *Id.*, ch. 8, p. 8-11. CDC Chapters

18.84 and 18.86 ***379** and CDC § 18.164.100 and the Tigard Park Plan carry out these recommendations.

Petitioner Florence Dolan owns a plumbing and electric supply store located on Main Street in the Central Business District of the city. The store covers approximately 9,700 square feet on the eastern side of a 1.67-acre parcel, which includes a gravel parking lot. Fanno Creek flows through the southwestern corner of the lot and along its western boundary. The year-round flow of the creek renders the area within the creek's 100-year floodplain virtually unusable for commercial development. The city's comprehensive plan includes the Fanno Creek floodplain as part of the city's greenway system.

Petitioner applied to the city for a permit to redevelop the site. Her proposed plans called for nearly doubling the size of the store to 17,600 square feet and paving a 39-space parking lot. The existing store, located on the opposite side of the parcel, would be razed in sections as construction progressed on the new building. In the second phase of the project, petitioner proposed to build an additional structure on the northeast side of ****2314** the site for complementary businesses and to provide more parking. The proposed expansion and intensified use are consistent with the city's zoning scheme in the Central Business District. CDC § 18.66.030, App. to Brief for Petitioner C-1 to C-3.

The City Planning Commission (Commission) granted petitioner's permit application subject to conditions imposed by the city's CDC. The CDC establishes the following standard for site development review approval:

> "Where landfill and/or development is allowed within and adjacent to the 100-year floodplain, the City shall require the dedication of sufficient open land area for greenway adjoining and within the floodplain. This area shall include portions at a suitable elevation for the construction of a pedestrian/bicycle pathway within the ***380** floodplain in accordance with the adopted pedestrian/bicycle plan." CDC § 18.120.180.A.8, App. to Brief for Respondent B-45 to B-46.

Thus, the Commission required that petitioner dedicate the portion of her property lying within the 100-year floodplain for improvement of a storm drainage system along Fanno Creek and that she dedicate an additional 15-foot strip of land adjacent to the floodplain as a pedestrian/bicycle pathway. [FN2] The dedication required by that condition encompasses approximately 7,000 square feet, or roughly 10% of the property. In accordance with city practice, petitioner could rely on the dedicated property to meet the 15% open space and landscaping requirement mandated by the city's zoning scheme. App. to Pet. for Cert. G-28 to G-29. The city would bear the cost of maintaining a landscaped buffer between the dedicated area and the new store. *Id.*, at G-44 to G-45.

> FN2. The city's decision includes the following relevant conditions: "1. The applicant shall dedicate to the City as Greenway all portions of the site that fall within the existing 100-year floodplain [of Fanno Creek] (*i.e.*, all portions of the property below elevation 150.0) and all property 15 feet above (to the east of) the 150.0 foot floodplain boundary. The building shall be designed so as not to intrude into the greenway area." App. to Pet. for Cert. G-43.

Petitioner requested variances from the CDC standards. Variances are granted only where it can be shown that, owing to special circumstances related to a specific piece of the land, the literal interpretation of the applicable zoning provisions would cause "an undue or unnecessary hardship" unless the variance is granted. CDC § 18.134.010, App. to Brief for Respondent B-47.[FN3] Rather than posing alternative***381** mitigating measures to offset the expected impacts of her proposed development, as allowed under the CDC, petitioner simply argued that her proposed development would not conflict with the policies of the comprehensive plan. *Id.*, at E-4. The Commission denied the request.

> FN3. CDC § 18.134.050 contains the following criteria whereby the decisionmaking authority can approve, approve with modifications, or deny a variance request:
>
> > "(1) The proposed variance will not be materially detrimental to the purposes of this title, be in conflict with the policies of the comprehensive plan, to any other applicable policies and standards, and to other properties in the same zoning district

> or vicinity;
>
> "(2) There are special circumstances that exist which are peculiar to the lot size or shape, topography or other circumstances over which the applicant has no control, and which are not applicable to other properties in the same zoning district;
>
> "(3) The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent possible, while permitting some economic use of the land;
>
> "(4) Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms, or parks will not be adversely affected any more than would occur if the development were located as specified in the title; and
>
> "(5) The hardship is not self-imposed and the variance requested is the minimum variance which would alleviate the hardship." App. to Brief for Respondent B-49 to B-50.

The Commission made a series of findings concerning the relationship between the dedicated conditions and the projected impacts of petitioner's project. First, the Commission noted that "[i]t is reasonable to assume that customers and employees of the future uses of this site could utilize a pedestrian/bicycle pathway adjacent to this development for their transportation and recreational needs." ****2315** City of Tigard Planning Commission Final Order No. 91-09 PC, App. to Pet. for Cert. G-24. The Commission noted that the site plan has provided for bicycle parking in a rack in front of the proposed building and "[i]t is reasonable to expect that some of the users of the bicycle parking provided for by the site plan will use the pathway adjacent to Fanno Creek if it is constructed." *Ibid.* In addition, the Commission found that creation of a convenient, safe pedestrian/bicycle pathway system as an alternative means of transportation "could ***382** offset some of the traffic demand on [nearby] streets and lessen the increase in traffic congestion." *Ibid.*

The Commission went on to note that the required floodplain dedication would be reasonably related to petitioner's request to intensify the use of the site given the increase in the impervious surface. The Commission stated that the "anticipated increased storm water flow from the subject property to an already strained creek and drainage basin can only add to the public need to manage the stream channel and floodplain for drainage purposes." *Id.,* at G-37. Based on this anticipated increased storm water flow, the Commission concluded that "the requirement of dedication of the floodplain area on the site is related to the applicant's plan to intensify development on the site." *Ibid.* The Tigard City Council approved the Commission's final order, subject to one minor modification; the city council reassigned the responsibility for surveying and marking the floodplain area from petitioner to the city's engineering department. *Id.,* at G-7.

Petitioner appealed to the Land Use Board of Appeals (LUBA) on the ground that the city's dedication requirements were not related to the proposed development, and, therefore, those requirements constituted an uncompensated taking of her property under the Fifth Amendment. In evaluating the federal taking claim, LUBA assumed that the city's findings about the impacts of the proposed development were supported by substantial evidence. *Dolan v. Tigard,* LUBA 91-161 (Jan. 7, 1992), reprinted at App. to Pet. for Cert. D-15, n. 9. Given the undisputed fact that the proposed larger building and paved parking area would increase the amount of impervious surfaces and the runoff into Fanno Creek, LUBA concluded that "there is a 'reasonable relationship' between the proposed development and the requirement to dedicate land along Fanno Creek for a greenway." *Id.,* at D-16. With respect to the pedestrian/bicycle pathway, LUBA noted the Commission's finding that a significantly***383** larger retail sales building and parking lot would attract larger numbers of customers and employees and their vehicles. It again found a "reasonable relationship" between alleviating the impacts of increased traffic from the development and facilitating the provision of a pedestrian/bicycle pathway as an alternative means of transportation. *Ibid.*

The Oregon Court of Appeals affirmed, rejecting petitioner's contention that in *Nollan v. California Coastal Comm'n,* 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), we had abandoned the "reasonable relationship" test in favor of a stricter "essential nexus" test. 113 Ore.App. 162, 832 P.2d 853 (1992).

The Oregon Supreme Court affirmed. 317 Ore. 110, 854 P.2d 437 (1993). The court also disagreed with petitioner's contention that the *Nollan* Court abandoned the "reasonably related" test. 317 Ore., at 118, 854 P.2d, at 442. Instead, the court read *Nollan* to mean that an "exaction is reasonably related to an impact if the exaction serves the same purpose that a denial of the permit would serve." 317 Ore., at 120, 854 P.2d, at 443. The court decided that both the pedestrian/bicycle pathway condition and the storm drainage dedication had an essential nexus to the development of the proposed site. *Id.*, at 121, 854 P.2d, at 443. Therefore, the court found the conditions to be reasonably related to the impact of the expansion of petitioner's business. *Ibid.*[FN4] ****2316** We granted certiorari, 510 U.S. 989, 114 S.Ct. 544, 126 L.Ed.2d 446 (1993), because of an alleged conflict between the Oregon Supreme Court's decision and our decision in *Nollan, supra.*

FN4. The Supreme Court of Oregon did not address the consequences of petitioner's failure to provide alternative mitigation measures in her variance application and we take the case as it comes to us. Accordingly, we do not pass on the constitutionality of the city's variance provisions.

II

[1] The Takings Clause of the Fifth Amendment of the United States Constitution, made applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239, 17 S.Ct. 581, 585, 41 L.Ed. 979 (1897), ***384** provides: "[N]or shall private property be taken for public use, without just compensation." [FN5] One of the principal purposes of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960). Without question, had the city simply required petitioner to dedicate a strip of land along Fanno Creek for public use, rather than conditioning the grant of her permit to redevelop her property on such a dedication, a taking would have occurred. *Nollan, supra*, 483 U.S., at 831, 107 S.Ct., at 3145. Such public access would deprive petitioner of the right to exclude others, "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 100 S.Ct. 383, 391, 62 L.Ed.2d 332 (1979).

FN5. Justice STEVENS' dissent suggests that this case is actually grounded in "substantive" due process, rather than in the view that the Takings Clause of the Fifth Amendment was made applicable to the States by the Fourteenth Amendment. But there is no doubt that later cases have held that the Fourteenth Amendment does make the Takings Clause of the Fifth Amendment applicable to the States, see *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 122, 98 S.Ct. 2646, 2658, 57 L.Ed.2d 631 (1978); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 827, 107 S.Ct. 3141, 3143, 97 L.Ed.2d 677 (1987). Nor is there any doubt that these cases have relied upon *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897), to reach that result. See, *e.g.*, *Penn Central*, *supra*, 438 U.S., at 122, 98 S.Ct., at 2658 ("The issu[e] presented ... [is] whether the restrictions imposed by New York City's law upon appellants' exploitation of the Terminal site effect a 'taking' of appellants' property for a public use within the meaning of the Fifth Amendment, which of course is made applicable to the States through the Fourteenth Amendment, see *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239, 17 S.Ct. 581, 585, 41 L.Ed. 979 (1897)").

[2] On the other side of the ledger, the authority of state and local governments to engage in land use planning has been sustained against constitutional challenge as long ago as our decision in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926). "Government hardly could go on if to some extent values incident to property could not be diminished ***385** without paying for every such change in the general law." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 159, 67 L.Ed. 322 (1922). A land use regulation does not effect a taking if it "substantially advance[s] legitimate state interests" and does not "den [y] an owner economically viable use of his land." *Agins v. City of Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980). [FN6]

FN6. There can be no argument that the

permit conditions would deprive petitioner of "economically beneficial us[e]" of her property as she currently operates a retail store on the lot. Petitioner assuredly is able to derive *some* economic use from her property. See, *e.g.*, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019, 112 S.Ct. 2886, 2895, 120 L.Ed.2d 798 (1992); *Kaiser Aetna v. United States*, 444 U.S. 164, 175, 100 S.Ct. 383, 390, 62 L.Ed.2d 332 (1979); *Penn Central Transp. Co. v. New York City*, *supra*, 438 U.S., at 124, 98 S.Ct., at 2659.

[3] The sort of land use regulations discussed in the cases just cited, however, differ in two relevant particulars from the present case. First, they involved essentially legislative determinations classifying entire areas of the city, whereas here the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel. Second, the conditions imposed were not simply a limitation on the use petitioner might make of her own parcel, but a requirement that she deed portions of the property to the city. In *Nollan*, *supra*, we ****2317** held that governmental authority to exact such a condition was circumscribed by the Fifth and Fourteenth Amendments. Under the well-settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right-here the right to receive just compensation when property is taken for a public use-in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property. See *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).

Petitioner contends that the city has forced her to choose between the building permit and her right under the Fifth ***386** Amendment to just compensation for the public easements. Petitioner does not quarrel with the city's authority to exact some forms of dedication as a condition for the grant of a building permit, but challenges the showing made by the city to justify these exactions. She argues that the city has identified "no special benefits" conferred on her, and has not identified any "special quantifiable burdens" created by her new store that would justify the particular dedications required from her which are not required from the public at large.

III

[4] In evaluating petitioner's claim, we must first determine whether the "essential nexus" exists between the "legitimate state interest" and the permit condition exacted by the city. *Nollan*, 483 U.S., at 837, 107 S.Ct., at 3148. If we find that a nexus exists, we must then decide the required degree of connection between the exactions and the projected impact of the proposed development. We were not required to reach this question in *Nollan*, because we concluded that the connection did not meet even the loosest standard. *Id.*, at 838, 107 S.Ct., at 3149. Here, however, we must decide this question.

A

[5] We addressed the essential nexus question in *Nollan*. The California Coastal Commission demanded a lateral public easement across the Nollans' beachfront lot in exchange for a permit to demolish an existing bungalow and replace it with a three-bedroom house. *Id.*, at 828, 107 S.Ct., at 3144. The public easement was designed to connect two public beaches that were separated by the Nollan's property. The Coastal Commission had asserted that the public easement condition was imposed to promote the legitimate state interest of diminishing the "blockage of the view of the ocean" caused by construction of the larger house.

We agreed that the Coastal Commission's concern with protecting visual access to the ocean constituted a legitimate ***387** public interest. *Id.*, at 835, 107 S.Ct., at 3148. We also agreed that the permit condition would have been constitutional "even if it consisted of the requirement that the Nollans provide a viewing spot on their property for passersby with whose sighting of the ocean their new house would interfere." *Id.*, at 836, 107 S.Ct., at 3148. We resolved, however, that the Coastal Commission's regulatory authority was set completely adrift from its constitutional moorings when it claimed that a nexus existed between visual access to the ocean and a permit condition requiring lateral public access along the Nollans' beachfront lot. *Id.*, at 837, 107 S.Ct., at 3148. How enhancing the public's ability to "traverse to and along the shorefront" served the same governmental purpose of "visual access to the ocean" from the roadway was beyond our ability to countenance. The absence of a nexus left the Coastal Commission in the

position of simply trying to obtain an easement through gimmickry, which converted a valid regulation of land use into " 'an out-and-out plan of extortion.' " *Ibid.*, quoting *J.E.D. Associates, Inc. v. Atkinson*, 121 N.H. 581, 584, 432 A.2d 12, 14-15 (1981).

No such gimmicks are associated with the permit conditions imposed by the city in this case. Undoubtedly, the prevention of flooding****2318** along Fanno Creek and the reduction of traffic congestion in the Central Business District qualify as the type of legitimate public purposes we have upheld. *Agins*, 447 U.S., at 260-262, 100 S.Ct., at 2141-2142. It seems equally obvious that a nexus exists between preventing flooding along Fanno Creek and limiting development within the creek's 100-year floodplain. Petitioner proposes to double the size of her retail store and to pave her now-gravel parking lot, thereby expanding the impervious surface on the property and increasing the amount of storm water runoff into Fanno Creek.

The same may be said for the city's attempt to reduce traffic congestion by providing for alternative means of transportation. In theory, a pedestrian/bicycle pathway provides a useful alternative means of transportation for workers and shoppers: "Pedestrians and bicyclists occupying dedicated ***388** spaces for walking and/or bicycling ... remove potential vehicles from streets, resulting in an overall improvement in total transportation system flow." A. Nelson, Public Provision of Pedestrian and Bicycle Access Ways: Public Policy Rationale and the Nature of Private Benefits 11, Center for Planning Development, Georgia Institute of Technology, Working Paper Series (Jan. 1994). See also Intermodal Surface Transportation Efficiency Act of 1991, Pub.L. 102-240, 105 Stat.1914 (recognizing pedestrian and bicycle facilities as necessary components of any strategy to reduce traffic congestion).

B

The second part of our analysis requires us to determine whether the degree of the exactions demanded by the city's permit conditions bears the required relationship to the projected impact of petitioner's proposed development. *Nollan, supra*, 483 U.S., at 834, 107 S.Ct., at 3147, quoting *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 127, 98 S.Ct. 2646, 2660, 57 L.Ed.2d 631 (1978) (" '[A] use restriction may constitute a "taking" if not reasonably necessary to the effectuation of a substantial government purpose' "). Here the Oregon Supreme Court deferred to what it termed the "city's unchallenged factual findings" supporting the dedication conditions and found them to be reasonably related to the impact of the expansion of petitioner's business. 317 Ore., at 120-121, 854 P.2d, at 443.

The city required that petitioner dedicate "to the City as Greenway all portions of the site that fall within the existing 100-year floodplain [of Fanno Creek] ... and all property 15 feet above [the floodplain] boundary." *Id.*, at 113, n. 3, 854 P.2d, at 439, n. 3. In addition, the city demanded that the retail store be designed so as not to intrude into the greenway area. The city relies on the Commission's rather tentative findings that increased storm water flow from petitioner's property "can only add to the public need to manage the [floodplain] for drainage purposes" to support its conclusion that the "requirement of dedication of the floodplain area on ***389** the site is related to the applicant's plan to intensify development on the site." City of Tigard Planning Commission Final Order No. 91-09 PC, App. to Pet. for Cert. G-37.

The city made the following specific findings relevant to the pedestrian/bicycle pathway:

> "In addition, the proposed expanded use of this site is anticipated to generate additional vehicular traffic thereby increasing congestion on nearby collector and arterial streets. Creation of a convenient, safe pedestrian/bicycle pathway system as an alternative means of transportation could offset some of the traffic demand on these nearby streets and lessen the increase in traffic congestion." *Id.*, at G-24.

The question for us is whether these findings are constitutionally sufficient to justify the conditions imposed by the city on petitioner's building permit. Since state courts have been dealing with this question a good deal longer than we have, we turn to representative decisions made by them.

In some States, very generalized statements as to the necessary connection between the required dedication and the proposed development seem to suffice. See, *e.g.*, *Billings Properties, Inc. v. Yellowstone County*, 144 Mont. 25, 394 P.2d 182 (1964); ****2319** *Jenad, Inc. v. Scarsdale*, 18 N.Y.2d 78, 271 N.Y.S.2d

955, 218 N.E.2d 673 (1966). We think this standard is too lax to adequately protect petitioner's right to just compensation if her property is taken for a public purpose.

Other state courts require a very exacting correspondence, described as the "specifi[c] and uniquely attributable" test. The Supreme Court of Illinois first developed this test in *Pioneer Trust & Savings Bank v. Mount Prospect*, 22 Ill.2d 375, 380, 176 N.E.2d 799, 802 (1961).[FN7] Under this standard, ***390** if the local government cannot demonstrate that its exaction is directly proportional to the specifically created need, the exaction becomes "a veiled exercise of the power of eminent domain and a confiscation of private property behind the defense of police regulations." *Id.*, at 381, 176 N.E.2d, at 802. We do not think the Federal Constitution requires such exacting scrutiny, given the nature of the interests involved.

> FN7. The "specifically and uniquely attributable" test has now been adopted by a minority of other courts. See, *e.g.*, *J.E.D. Associates, Inc. v. Atkinson*, 121 N.H. 581, 585, 432 A.2d 12, 15 (1981); *Divan Builders, Inc. v. Planning Bd. of Twp. of Wayne*, 66 N.J. 582, 600-601, 334 A.2d 30, 40 (1975); *McKain v. Toledo City Plan Comm'n*, 26 Ohio App.2d 171, 176, 270 N.E.2d 370, 374 (1971); *Frank Ansuini, Inc. v. Cranston*, 107 R.I. 63, 69, 264 A.2d 910, 913 (1970).

A number of state courts have taken an intermediate position, requiring the municipality to show a "reasonable relationship" between the required dedication and the impact of the proposed development. Typical is the Supreme Court of Nebraska's opinion in *Simpson v. North Platte*, 206 Neb. 240, 245, 292 N.W.2d 297, 301 (1980), where that court stated:

> "The distinction, therefore, which must be made between an appropriate exercise of the police power and an improper exercise of eminent domain is whether the requirement has some reasonable relationship or nexus to the use to which the property is being made or is merely being used as an excuse for taking property simply because at that particular moment the landowner is asking the city for some license or permit."

Thus, the court held that a city may not require a property owner to dedicate private property for some future public use as a condition of obtaining a building permit when such future use is not "occasioned by the construction sought to be permitted." *Id.*, at 248, 292 N.W.2d, at 302.

Some form of the reasonable relationship test has been adopted in many other jurisdictions. See, *e.g.*, *Jordan v. Menomonee Falls*, 28 Wis.2d 608, 137 N.W.2d 442 (1965); *Collis v. Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (1976) (requiring a showing of a reasonable relationship between ***391** the planned subdivision and the municipality's need for land); *College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 807 (Tex.1984); *Call v. West Jordan*, 606 P.2d 217, 220 (Utah 1979) (affirming use of the reasonable relation test). Despite any semantical differences, general agreement exists among the courts "that the dedication should have some reasonable relationship to the needs created by the [development]." *Ibid.* See generally Note " 'Take' My Beach Please!": *Nollan v. California Coastal Commission* and a Rational-Nexus Constitutional Analysis of Development Exactions, 69 B.U.L.Rev. 823 (1989); see also *Parks v. Watson*, 716 F.2d 646, 651-653 (CA9 1983).

[6] We think the "reasonable relationship" test adopted by a majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term "reasonable relationship" seems confusingly similar to the term "rational basis" which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication****2320** is related both in nature and extent to the impact of the proposed development.[FN8]

> FN8. Justice STEVENS' dissent takes us to task for placing the burden on the city to justify the required dedication. He is correct in arguing that in evaluating most generally applicable zoning regulations, the burden properly rests on the party challenging the regulation to prove that it constitutes an arbitrary regulation of property rights. See,

e.g., *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926). Here, by contrast, the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel. In this situation, the burden properly rests on the city. See *Nollan*, 483 U.S., at 836, 107 S.Ct., at 3148. This conclusion is not, as he suggests, undermined by our decision in *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977), in which we struck down a housing ordinance that limited occupancy of a dwelling unit to members of a single family as violating the Due Process Clause of the Fourteenth Amendment. The ordinance at issue in *Moore* intruded on choices concerning family living arrangements, an area in which the usual deference to the legislature was found to be inappropriate. *Id.*, at 499, 97 S.Ct., at 1935.

[7] ***392** Justice STEVENS' dissent relies upon a law review article for the proposition that the city's conditional demands for part of petitioner's property are "a species of business regulation that heretofore warranted a strong presumption of constitutional validity." *Post*, at 2325. But simply denominating a governmental measure as a "business regulation" does not immunize it from constitutional challenge on the ground that it violates a provision of the Bill of Rights. In *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978), we held that a statute authorizing a warrantless search of business premises in order to detect OSHA violations violated the Fourth Amendment. See also *Air Pollution Variance Bd., of Colo. v. Western Alfalfa Corp.*, 416 U.S. 861, 94 S.Ct. 2114, 40 L.Ed.2d 607 (1974); *New York v. Burger*, 482 U.S. 691, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987). And in *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980), we held that an order of the New York Public Service Commission, designed to cut down the use of electricity because of a fuel shortage, violated the First Amendment insofar as it prohibited advertising by a utility company to promote the use of electricity. We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances. We turn now to analysis of whether the findings relied upon by the city here, first with respect to the floodplain easement, and second with respect to the pedestrian/bicycle path, satisfied these requirements.

[8] It is axiomatic that increasing the amount of impervious surface will increase the quantity and rate of storm water flow from petitioner's property. Record, Doc. No. F, ch. 4, ***393** p. 4-29. Therefore, keeping the floodplain open and free from development would likely confine the pressures on Fanno Creek created by petitioner's development. In fact, because petitioner's property lies within the Central Business District, the CDC already required that petitioner leave 15% of it as open space and the undeveloped floodplain would have nearly satisfied that requirement. App. to Pet. for Cert. G-16 to G-17. But the city demanded more-it not only wanted petitioner not to build in the floodplain, but it also wanted petitioner's property along Fanno Creek for its greenway system. The city has never said why a public greenway, as opposed to a private one, was required in the interest of flood control.

The difference to petitioner, of course, is the loss of her ability to exclude others. As we have noted, this right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Kaiser Aetna*, 444 U.S., at 176, 100 S.Ct., at 391. It is difficult to see why recreational visitors trampling along petitioner's floodplain easement are sufficiently related to the city's legitimate interest in reducing flooding problems along Fanno Creek, and the city has not attempted to ****2321** make any individualized determination to support this part of its request.

The city contends that the recreational easement along the greenway is only ancillary to the city's chief purpose in controlling flood hazards. It further asserts that unlike the residential property at issue in *Nollan*, petitioner's property is commercial in character, and therefore, her right to exclude others is compromised. Brief for Respondent 41, quoting *United States v. Orito*, 413 U.S. 139, 142, 93 S.Ct. 2674, 2677, 37 L.Ed.2d 513 (1973) (" 'The Constitution extends special safeguards to the privacy of the home' "). The city maintains that "[t]here is nothing to suggest that preventing [petitioner] from prohibiting [the easements] will unreasonably impair the value of [her] property as a [retail store]." *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 83, 100 S.Ct. 2035,

2042, 64 L.Ed.2d 741 (1980).

***394** Admittedly, petitioner wants to build a bigger store to attract members of the public to her property. She also wants, however, to be able to control the time and manner in which they enter. The recreational easement on the greenway is different in character from the exercise of state-protected rights of free expression and petition that we permitted in *PruneYard.* In *PruneYard,* we held that a major private shopping center that attracted more than 25,000 daily patrons had to provide access to persons exercising their state constitutional rights to distribute pamphlets and ask passers-by to sign their petitions. *Id.*, at 85, 100 S.Ct., at 2042. We based our decision, in part, on the fact that the shopping center "may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions." *Id.*, at 83, 100 S.Ct., at 2042. By contrast, the city wants to impose a permanent recreational easement upon petitioner's property that borders Fanno Creek. Petitioner would lose all rights to regulate the time in which the public entered onto the greenway, regardless of any interference it might pose with her retail store. Her right to exclude would not be regulated, it would be eviscerated.

If petitioner's proposed development had somehow encroached on existing greenway space in the city, it would have been reasonable to require petitioner to provide some alternative greenway space for the public either on her property or elsewhere. See *Nollan,* 483 U.S., at 836, 107 S.Ct., at 3148 ("Although such a requirement, constituting a permanent grant of continuous access to the property, would have to be considered a taking if it were not attached to a development permit, the Commission's assumed power to forbid construction of the house in order to protect the public's view of the beach must surely include the power to condition construction upon some concession by the owner, even a concession of property rights, that serves the same end"). But that is not the case here. We conclude that the findings upon which the city relies***395** do not show the required reasonable relationship between the floodplain easement and the petitioner's proposed new building.

[9][10] With respect to the pedestrian/bicycle pathway, we have no doubt that the city was correct in finding that the larger retail sales facility proposed by petitioner will increase traffic on the streets of the Central Business District. The city estimates that the proposed development would generate roughly 435 additional trips per day.[FN9] Dedications for streets, sidewalks, and other public ways are generally reasonable exactions to avoid excessive congestion from a proposed property use. But on the record before us, the city has not met its burden of demonstrating that the additional number of vehicle and bicycle trips generated by petitioner's development reasonably relate to the city's requirement for a dedication of the pedestrian/bicycle pathway easement. The city simply found that the creation of the pathway "could offset some of the traffic ****2322** demand ... and lessen the increase in traffic congestion." [FN10]

FN9. The city uses a weekday average trip rate of 53.21 trips per 1,000 square feet. Additional Trips Generated = 53.21 X (17,600-9,720). App. to Pet. for Cert. G-15.

FN10. In rejecting petitioner's request for a variance from the pathway dedication condition, the city stated that omitting the planned section of the pathway across petitioner's property would conflict with its adopted policy of providing a continuous pathway system. But the Takings Clause requires the city to implement its policy by condemnation unless the required relationship between petitioner's development and added traffic is shown.

As Justice Peterson of the Supreme Court of Oregon explained in his dissenting opinion, however, "[t]he findings of fact that the bicycle pathway system '*could* offset some of the traffic demand' is a far cry from a finding that the bicycle pathway system *will,* or is *likely to,* offset some of the traffic demand." 317 Ore., at 127, 854 P.2d, at 447 (emphasis in original). No precise mathematical calculation is required, but the city must make some effort to quantify its findings in ***396** support of the dedication for the pedestrian/bicycle pathway beyond the conclusory statement that it could offset some of the traffic demand generated.

IV

Cities have long engaged in the commendable task of land use planning, made necessary by increasing urbanization, particularly in metropolitan

areas such as Portland. The city's goals of reducing flooding hazards and traffic congestion, and providing for public greenways, are laudable, but there are outer limits to how this may be done. "A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal*, 260 U.S., at 416, 43 S.Ct., at 160.

The judgment of the Supreme Court of Oregon is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice STEVENS, with whom Justice BLACKMUN and Justice GINSBURG join, dissenting.

The record does not tell us the dollar value of petitioner Florence Dolan's interest in excluding the public from the greenway adjacent to her hardware business. The mountain of briefs that the case has generated nevertheless makes it obvious that the pecuniary value of her victory is far less important than the rule of law that this case has been used to establish. It is unquestionably an important case.

Certain propositions are not in dispute. The enlargement of the Tigard unit in Dolan's chain of hardware stores will have an adverse impact on the city's legitimate and substantial interests in controlling drainage in Fanno Creek and minimizing traffic congestion in Tigard's business district. That impact is sufficient to justify an outright denial of her application for approval of the expansion. The city has nevertheless***397** agreed to grant Dolan's application if she will comply with two conditions, each of which admittedly will mitigate the adverse effects of her proposed development. The disputed question is whether the city has violated the Fourteenth Amendment to the Federal Constitution by refusing to allow Dolan's planned construction to proceed unless those conditions are met.

The Court is correct in concluding that the city may not attach arbitrary conditions to a building permit or to a variance even when it can rightfully deny the application outright. I also agree that state court decisions dealing with ordinances that govern municipal development plans provide useful guidance in a case of this kind. Yet the Court's description of the doctrinal underpinnings of its decision, the phrasing of its fledgling test of "rough proportionality," and the application of that test to this case run contrary to the traditional treatment of these cases and break considerable and unpropitious new ground.

I

Candidly acknowledging the lack of federal precedent for its exercise in rulemaking, the Court purports to find guidance in 12 "representative"****2323** state court decisions. To do so is certainly appropriate.[FN1] The state cases the Court consults, however, either fail to support or decidedly undermine the Court's conclusions in key respects.

FN1. Cf. *Moore v. East Cleveland*, 431 U.S. 494, 513-521, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (STEVENS, J., concurring in judgment).

First, although discussion of the state cases permeates the Court's analysis of the appropriate test to apply in this case, the test on which the Court settles is not naturally derived from those courts' decisions. The Court recognizes as an initial matter that the city's conditions satisfy the "essential nexus" requirement announced in *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), because they serve the legitimate interests in minimizing floods and traffic congestions.***398** *Ante*, at 2317-2318.[FN2] The Court goes on, however, to erect a new constitutional hurdle in the path of these conditions. In addition to showing a rational nexus to a public purpose that would justify an outright denial of the permit, the city must also demonstrate "rough proportionality" between the harm caused by the new land use and the benefit obtained by the condition. *Ante*, at 2319. The Court also decides for the first time that the city has the burden of establishing the constitutionality of its conditions by making an "individualized determination" that the condition in question satisfies the proportionality requirement. See *Ibid.*

FN2. In *Nollan* the Court recognized that a state agency may condition the grant of a land use permit on the dedication of a property interest if the dedication serves a legitimate police-power purpose that would justify a refusal to issue the permit. For the first time, however, it held that such a condition is unconstitutional if the condition "utterly fails" to further a goal that would justify the

> refusal. 483 U.S., at 837, 107 S.Ct., at 3148. In the *Nollan* Court's view, a condition would be constitutional even if it required the Nollans to provide a viewing spot for passers-by whose view of the ocean was obstructed by their new house. *Id.*, at 836, 107 S.Ct., at 3148. "Although such a requirement, constituting a permanent grant of continuous access to the property, would have to be considered a taking if it were not attached to a development permit, the Commission's assumed power to forbid construction of the house in order to protect the public's view of the beach must surely include the power to condition construction upon some concession by the owner, even a concession of property rights, that serves the same end." *Ibid.*

Not one of the state cases cited by the Court announces anything akin to a "rough proportionality" requirement. For the most part, moreover, those cases that invalidated municipal ordinances did so on state law or unspecified grounds roughly equivalent to *Nollan* 's "essential nexus" requirement. See, *e.g.*, *Simpson v. North Platte*, 206 Neb. 240, 245-248, 292 N.W.2d 297, 301-302 (1980) (ordinance lacking "reasonable relationship" or "rational nexus" to property's use violated Nebraska Constitution); *J.E.D. Associates, Inc. v. Atkinson*, 121 N.H. 581, 583-585, 432 A.2d 12, 14-15 (1981) (state constitutional grounds). One case purporting***399** to apply the strict "specifically and uniquely attributable" test established by *Pioneer Trust & Savings Bank v. Mount Prospect*, 22 Ill.2d 375, 176 N.E.2d 799 (1961), nevertheless found that test was satisfied because the legislature had decided that the subdivision at issue created the need for a park or parks. *Billings Properties, Inc. v. Yellowstone County*, 144 Mont. 25, 33-36, 394 P.2d 182, 187-188 (1964). In only one of the seven cases upholding a land use regulation did the losing property owner petition this Court for certiorari. See *Jordan v. Menomonee Falls*, 28 Wis.2d 608, 137 N.W.2d 442 (1965), appeal dism'd, 385 U.S. 4, 87 S.Ct. 36, 17 L.Ed.2d 3 (1966) (want of substantial federal question). Although 4 of the 12 opinions mention the Federal Constitution-2 of those only in passing-it is quite obvious that neither the courts nor the litigants imagined they might be participating in the development of a new rule of federal law. Thus, although these state cases do lend support to the Court's reaffirmance of *Nollan* 's reasonable nexus requirement, the role the Court accords them in the announcement of its newly minted second phase of the constitutional inquiry is remarkably inventive.

****2324** In addition, the Court ignores the state courts' willingness to consider what the property owner gains from the exchange in question. The Supreme Court of Wisconsin, for example, found it significant that the village's approval of a proposed subdivision plat "enables the subdivider to profit financially by selling the subdivision lots as home-building sites and thus realizing a greater price than could have been obtained if he had sold his property as unplatted lands." *Jordan v. Menomonee Falls*, 28 Wis.2d, at 619-620, 137 N.W.2d, at 448. The required dedication as a condition of that approval was permissible "[i]n return for this benefit." *Ibid.* See also *Collis v. Bloomington*, 310 Minn. 5, 11-13, 246 N.W.2d 19, 23-24 (1976) (citing *Jordan*); *College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 806 (Tex.1984) (dedication requirement only triggered when developer *chooses* ***400** to develop land). In this case, moreover, Dolan's acceptance of the permit, with its attached conditions, would provide her with benefits that may well go beyond any advantage she gets from expanding her business. As the United States pointed out at oral argument, the improvement that the city's drainage plan contemplates would widen the channel and reinforce the slopes to increase the carrying capacity during serious floods, "confer[ring] considerable benefits on the property owners immediately adjacent to the creek." Tr. of Oral Arg. 41-42.

The state court decisions also are enlightening in the extent to which they required that the *entire parcel* be given controlling importance. All but one of the cases involve challenges to provisions in municipal ordinances requiring developers to dedicate either a percentage of the entire parcel (usually 7 or 10 percent of the platted subdivision) or an equivalent value in cash (usually a certain dollar amount per lot) to help finance the construction of roads, utilities, schools, parks, and playgrounds. In assessing the legality of the conditions, the courts gave no indication that the transfer of an interest in realty was any more objectionable than a cash payment. See, *e.g.*, *Jenad, Inc. v. Scarsdale*, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E.2d 673 (1966); *Jordan v. Menomonee Falls*, 28 Wis.2d 608, 137 N.W.2d 442 (1965); *Collis v. Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (1976). None of the decisions identified the surrender of the fee own-

er's "power to exclude" as having any special significance. Instead, the courts uniformly examined the character of the entire economic transaction.

II

It is not merely state cases, but our own cases as well, that require the analysis to focus on the impact of the city's action on the entire parcel of private property. In *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), we stated that takings jurisprudence "does not divide a single parcel ***401** into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." *Id.*, at 130-131, 98 S.Ct., at 2662. Instead, this Court focuses "both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole." *Ibid.* *Andrus v. Allard*, 444 U.S. 51, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979), reaffirmed the nondivisibility principle outlined in *Penn Central*, stating that "[a]t least where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety." 444 U.S., at 65-66, 100 S.Ct., at 327.[FN3] As recently as last Term, we approved the principle again. See *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 644, 113 S.Ct. 2264, 2290, 124 L.Ed.2d 539 (1993) (explaining that "a claimant's parcel of property [cannot] first be divided into what was taken and what was left" to demonstrate a compensable taking). Although limitation of the right to exclude others undoubtedly constitutes a significant ****2325** infringement upon property ownership, *Kaiser Aetna v. United States*, 444 U.S. 164, 179-180, 100 S.Ct. 383, 393, 62 L.Ed.2d 332 (1979), restrictions on that right do not alone constitute a taking, and do not do so in any event unless they "unreasonably impair the value or use" of the property. *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 82-84, 100 S.Ct. 2035, 2041-2042, 64 L.Ed.2d 741 (1980).

> FN3. Similarly, in *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 498-499, 107 S.Ct. 1232, 1249, 94 L.Ed.2d 472 (1987), we concluded that "[t]he 27 million tons of coal do not constitute a separate segment of property for takings law purposes" and that "[t]here is no basis for treating the less than 2% of petitioners' coal as a separate parcel of property."

The Court's narrow focus on one strand in the property owner's bundle of rights is particularly misguided in a case involving the development of commercial property. As Professor Johnston has noted:

> "The subdivider is a manufacturer, processer, and marketer of a product; land is but one of his raw materials. In subdivision control disputes, the developer is ***402** not defending hearth and home against the king's intrusion, but simply attempting to maximize his profits from the sale of a finished product. As applied to him, subdivision control exactions are actually business regulations." Johnston, Constitutionality of Subdivision Control Exactions: The Quest for A Rationale, 52 Cornell L.Q. 871, 923 (1967).[FN4]
>
> > FN4. Johnston's article also sets forth a fair summary of the state cases from which the Court purports to derive its "rough proportionality" test. See 52 Cornell L.Q., at 917. Like the Court, Johnston observed that cases requiring a "rational nexus" between exactions and public needs created by the new subdivision-especially *Jordan v. Menomonee Falls*, 28 Wis.2d 608, 137 N.W.2d 442 (1965)-"stee[r] a moderate course" between the "judicial obstructionism" of *Pioneer Trust & Savings Bank v. Mount Prospect*, 22 Ill.2d 375, 176 N.E.2d 799 (1961), and the "excessive deference" of *Billings Properties, Inc. v. Yellowstone County*, 144 Mont. 25, 394 P.2d 182 (1964). 52 Cornell L.Q., at 917.

The exactions associated with the development of a retail business are likewise a species of business regulation that heretofore warranted a strong presumption of constitutional validity.

In Johnston's view, "if the municipality can demonstrate that its assessment of financial burdens against subdividers is rational, impartial, and conducive to fulfillment of authorized planning objectives, its action need be invalidated only in those extreme and presumably rare cases where the burden of compliance is sufficiently great to deter the owner from proceeding with his planned development." *Id.*, at 917. The city of Tigard has demonstrated that its plan is rational and impartial and that the conditions at

issue are "conducive to fulfillment of authorized planning objectives." Dolan, on the other hand, has offered no evidence that her burden of compliance has any impact at all on the value or profitability of her planned development. Following the teaching of the cases on which it purports to rely, the Court should not isolate the burden associated with the loss of the power to exclude***403** from an evaluation of the benefit to be derived from the permit to enlarge the store and the parking lot.

The Court's assurances that its "rough proportionality" test leaves ample room for cities to pursue the "commendable task of land use planning," *ante,* at 2322-even twice avowing that "[n]o precise mathematical calculation is required," *ante,* at 2319, 2322-are wanting given the result that test compels here. Under the Court's approach, a city must not only "quantify its findings," *ante,* at 2322, and make "individualized determination[s]" with respect to the nature *and* the extent of the relationship between the conditions and the impact, *ante,* at 2319, 2320, but also demonstrate "proportionality." The correct inquiry should instead concentrate on whether the required nexus is present and venture beyond considerations of a condition's nature or germaneness only if the developer establishes that a concededly germane condition is so grossly disproportionate to the proposed development's adverse effects that it manifests motives other than land use regulation on the part of the city.[FN5] ****2326** The heightened requirement the Court imposes on cities is even more unjustified when all the tools needed to resolve the questions presented by this case can be garnered from our existing case law.

> FN5. Dolan's attorney overstated the danger when he suggested at oral argument that without some requirement for proportionality, "[t]he City could have found that Mrs. Dolan's new store would have increased traffic by one additional vehicle trip per day [and] could have required her to dedicate 75, 95 percent of her land for a widening of Main Street." Tr. of Oral Arg. 52-53.

III

Applying its new standard, the Court finds two defects in the city's case. First, while the record would adequately support a requirement that Dolan maintain the portion of the floodplain on her property as undeveloped open space, it does not support the additional requirement that the floodplain be dedicated to the city. *Ante,* at 2320-2322. Second, ***404** while the city adequately established the traffic increase that the proposed development would generate, it failed to quantify the offsetting decrease in automobile traffic that the bike path will produce. *Ante,* at 2321-2322. Even under the Court's new rule, both defects are, at most, nothing more than harmless error.

In her objections to the floodplain condition, Dolan made no effort to demonstrate that the dedication of that portion of her property would be any more onerous than a simple prohibition against any development on that portion of her property. Given the commercial character of both the existing and the proposed use of the property as a retail store, it seems likely that potential customers "trampling along petitioner's floodplain," *ante,* at 2320, are more valuable than a useless parcel of vacant land. Moreover, the duty to pay taxes and the responsibility for potential tort liability may well make ownership of the fee interest in useless land a liability rather than an asset. That may explain why Dolan never conceded that she could be prevented from building on the floodplain. The city attorney also pointed out that absent a dedication, property owners would be required to "build on their own land" and "with their own money" a storage facility for the water runoff. Tr. of Oral Arg. 30-31. Dolan apparently "did have that option," but chose not to seek it. *Id.,* at 31. If Dolan might have been entitled to a variance confining the city's condition in a manner this Court would accept, her failure to seek that narrower form of relief at any stage of the state administrative and judicial proceedings clearly should preclude that relief in this Court now.

The Court's rejection of the bike path condition amounts to nothing more than a play on words. Everyone agrees that the bike path "could" offset some of the increased traffic flow that the larger store will generate, but the findings do not unequivocally state that it *will* do so, or tell us just how many cyclists will replace motorists. Predictions on such matters are inherently nothing more than estimates. Certainly***405** the assumption that there will be an offsetting benefit here is entirely reasonable and should suffice whether it amounts to 100 percent, 35 percent, or only 5 percent of the increase in automobile traffic that would otherwise occur. If the Court proposes to have the federal judiciary micro-manage state decisions of this

kind, it is indeed extending its welcome mat to a significant new class of litigants. Although there is no reason to believe that state courts have failed to rise to the task, property owners have surely found a new friend today.

IV

The Court has made a serious error by abandoning the traditional presumption of constitutionality and imposing a novel burden of proof on a city implementing an admittedly valid comprehensive land use plan. Even more consequential than its incorrect disposition of this case, however, is the Court's resurrection of a species of substantive due process analysis that it firmly rejected decades ago.[FN6]

FN6. See, *e.g.*, *Ferguson v. Skrupa*, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963).

The Court begins its constitutional analysis by citing *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239, 17 S.Ct. 581, 585, 41 L.Ed. 979 (1897), for the proposition that the Takings Clause of the Fifth Amendment is "applicable to the States through the Fourteenth ****2327** Amendment." *Ante*, at 2316. That opinion, however, contains no mention of either the Takings Clause or the Fifth Amendment; [FN7] it held that the protection afforded by the Due Process Clause of the Fourteenth Amendment extends to matters of substance as well as procedure,[FN8] and that the substance***406** of "the due process of law enjoined by the Fourteenth Amendment requires compensation to be made or adequately secured to the owner of private property taken for public use under the authority of a State." 166 U.S., at 235, 236-241, 17 S.Ct., at 584, 584-586. It applied the same kind of substantive due process analysis more frequently identified with a better known case that accorded similar substantive protection to a baker's liberty interest in working 60 hours a week and 10 hours a day. See *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905).[FN9]

FN7. An earlier case deemed it "well settled" that the Takings Clause "is a limitation on the power of the Federal government, and not on the States." *Pumpelly v. Green Bay Co.*, 13 Wall. 166, 177, 20 L.Ed. 557 (1872).

FN8. The Court held that a State "may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form." *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 234-235, 17 S.Ct. 581, 584, 41 L.Ed. 979 (1897).

FN9. The *Lochner* Court refused to presume that there was a reasonable connection between the regulation and the state interest in protecting the public health. 198 U.S., at 60-61, 25 S.Ct., at 544. A similar refusal to identify a sufficient nexus between an enlarged building with a newly paved parking lot and the state interests in minimizing the risks of flooding and traffic congestion proves fatal to the city's permit conditions in this case under the Court's novel approach.

Later cases have interpreted the Fourteenth Amendment's substantive protection against uncompensated deprivations of private property by the States as though it incorporated the text of the Fifth Amendment's Takings Clause. See, *e.g.*, *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 481, n. 10, 107 S.Ct. 1232, 1240, n. 10, 94 L.Ed.2d 472 (1987). There was nothing problematic about that interpretation in cases enforcing the Fourteenth Amendment against state action that involved the actual physical invasion of private property. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427-433, 102 S.Ct. 3164, 3172-3175, 73 L.Ed.2d 868 (1982); *Kaiser Aetna v. United States*, 444 U.S., at 178-180, 100 S.Ct., at 392-393. Justice Holmes charted a significant new course, however, when he opined that a state law making it "commercially impracticable to mine certain coal" had "very nearly the same effect for constitutional purposes as appropriating or destroying it." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 414, 43 S.Ct. 158, 159, 67 L.Ed. 322 (1922). The so-called "regulatory ***407** takings" doctrine that the Holmes dictum [FN10] kindled has an obvious kinship with the line of substantive due process cases that *Lochner* exemplified. Besides having similar ancestry, both doctrines are potentially

open-ended sources of judicial power to invalidate state economic regulations that Members of this Court view as unwise or unfair.

FN10. See *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S., at 484, 107 S.Ct., at 1241 (explaining why this portion of the opinion was merely "advisory").

This case inaugurates an even more recent judicial innovation than the regulatory takings doctrine: the application of the "unconstitutional conditions" label to a mutually beneficial transaction between a property owner and a city. The Court tells us that the city's refusal to grant Dolan a discretionary benefit infringes her right to receive just compensation for the property interests that she has refused to dedicate to the city "where the property sought has little or no relationship to the benefit." [FN11] Although it is ****2328** well settled that a government cannot deny a benefit on a basis that infringes constitutionally protected interests-"especially [one's] interest in freedom of speech," *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972)-the "unconstitutional conditions" doctrine provides an inadequate framework in which to analyze this case.[FN12]

FN11. *Ante*, at 2317. The Court's entire explanation reads: "Under the well-settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right-here the right to receive just compensation when property is taken for a public use-in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property."

FN12. Although it has a long history, see *Home Ins. Co. v. Morse*, 20 Wall. 445, 451, 22 L.Ed. 365 (1874), the "unconstitutional conditions" doctrine has for just as long suffered from notoriously inconsistent application; it has never been an overarching principle of constitutional law that operates with equal force regardless of the nature of the rights and powers in question. See, *e.g.*, Sunstein, Why the Unconstitutional Conditions Doctrine is an Anachronism, 70 B.U.L.Rev. 593, 620 (1990) (doctrine is "too crude and too general to provide help in contested cases"); Sullivan, Unconstitutional Conditions, 102 Harv.L.Rev. 1415, 1416 (1989) (doctrine is "riven with inconsistencies"); Hale, Unconstitutional Conditions and Constitutional Rights, 35 Colum.L.Rev. 321, 322 (1935) ("The Supreme Court has sustained many such exertions of power even after announcing the broad doctrine that would invalidate them"). As the majority's case citations suggest, *ante*, at 2316, modern decisions invoking the doctrine have most frequently involved First Amendment liberties, see also, *e.g.*, *Connick v. Myers*, 461 U.S. 138, 143-144, 103 S.Ct. 1684, 1688, 75 L.Ed.2d 708 (1983); *Elrod v. Burns*, 427 U.S. 347, 361-363, 96 S.Ct. 2673, 2684, 49 L.Ed.2d 547 (1976) (plurality opinion); *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963); *Speiser v. Randall*, 357 U.S. 513, 518-519, 78 S.Ct. 1332, 1338, 2 L.Ed.2d 1460 (1958). But see *Posadas de Puerto Rico Associates v. Tourism Co. of P.R.*, 478 U.S. 328, 345-346, 106 S.Ct. 2968, 2979, 92 L.Ed.2d 266 (1986) ("[T]he greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling"). The necessary and traditional breadth of municipalities' power to regulate property development, together with the absence here of fragile and easily "chilled" constitutional rights such as that of free speech, make it quite clear that the Court is really writing on a clean slate rather than merely applying "well-settled" doctrine. *Ante*, at 2316.

***408** Dolan has no right to be compensated for a taking unless the city acquires the property interests that she has refused to surrender. Since no taking has yet occurred, there has not been any infringement of her constitutional right to compensation. See *Preseault v. ICC*, 494 U.S. 1, 11-17, 110 S.Ct. 914, 921-924, 108 L.Ed.2d 1 (1990) (finding takings claim premature because property owner had not yet sought compensation under Tucker Act); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 294-295, 101 S.Ct. 2352, 2370, 69 L.Ed.2d 1 (1981) (no taking where no one "identified any property ... that has allegedly been taken").

Even if Dolan should accept the city's conditions in exchange for the benefit that she seeks, it would not necessarily follow that she had been denied "just compensation" since it would be appropriate to consider the receipt of that benefit in any calculation of "just compensation." See *Pennsylvania Coal Co. v. Mahon*, 260 U.S., at 415, 43 S.Ct., at 160 (noting that an "average reciprocity of advantage" was deemed to justify many laws); *Hodel v. Irving*, 481 U.S. 704, 715, 107 S.Ct. 2076, 2082, 95 L.Ed.2d 668 (1987) (such " 'reciprocity of advantage' " weighed in favor of a statute's constitutionality).***409** Particularly in the absence of any evidence on the point, we should not presume that the discretionary benefit the city has offered is less valuable than the property interests that Dolan can retain or surrender at her option. But even if that discretionary benefit were so trifling that it could not be considered just compensation when it has "little or no relationship" to the property, the Court fails to explain why the same value would suffice when the required nexus is present. In this respect, the Court's reliance on the "unconstitutional conditions" doctrine is assuredly novel, and arguably incoherent. The city's conditions are by no means immune from constitutional scrutiny. The level of scrutiny, however, does not approximate the kind of review that would apply if the city had insisted on a surrender of Dolan's First Amendment rights in exchange for a building ****2329** permit. One can only hope that the Court's reliance today on First Amendment cases, see *ante*, at 2317 (citing *Perry v. Sindermann, supra,* and *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968)), and its candid disavowal of the term "rational basis" to describe its new standard of review, see *ante*, at 2319, do not signify a reassertion of the kind of superlegislative power the Court exercised during the *Lochner* era.

The Court has decided to apply its heightened scrutiny to a single strand-the power to exclude-in the bundle of rights that enables a commercial enterprise to flourish in an urban environment. That intangible interest is undoubtedly worthy of constitutional protection-much like the grandmother's interest in deciding which of her relatives may share her home in *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). Both interests are protected from arbitrary state action by the Due Process Clause of the Fourteenth Amendment. It is, however, a curious irony that Members of the majority in this case would impose an almost insurmountable burden of proof on the property owner in the *Moore* case ***410** while saddling the city with a heightened burden in this case.[FN13]

> FN13. The author of today's opinion joined Justice Stewart's dissent in *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). There the dissenters found it sufficient, in response to my argument that the zoning ordinance was an arbitrary regulation of property rights, that "if the ordinance is a rational attempt to promote 'the city's interest in preserving the character of its neighborhoods,' *Young v. American Mini Theatres [Inc.,]* 427 U.S. 50, 71 [96 S.Ct. 2440, 2452, 49 L.Ed.2d 310 (1976)] (opinion of STEVENS, J.), it is ... a permissible restriction on the use of private property under *Euclid v. Ambler Realty Co.*, 272 U.S. 365 [47 S.Ct. 114, 71 L.Ed. 303 (1926)], and *Nectow v. Cambridge*, 277 U.S. 183 [48 S.Ct. 447, 72 L.Ed. 842 (1928)]." *Id.*, 431 U.S., at 540, n. 10, 97 S.Ct., at 1956, n. 10. The dissent went on to state that my calling the city to task for failing to explain the need for enacting the ordinance *"place[d] the burden on the wrong party." Ibid.* (emphasis added). Recently, two other Members of today's majority severely criticized the holding in *Moore*. See *United States v. Carlton*, 512 U.S. 26, 40-42, 114 S.Ct. 2018, 2027, 129 L.Ed.2d 22 (1994) (SCALIA, J., concurring in judgment); see also *id.*, at 39, 114 S.Ct. at 2020 (SCALIA, J., concurring in judgment) (calling the doctrine of substantive due process "an oxymoron").

In its application of what is essentially the doctrine of substantive due process, the Court confuses the past with the present. On November 13, 1922, the village of Euclid, Ohio, adopted a zoning ordinance that effectively confiscated 75 percent of the value of property owned by the Ambler Realty Company. Despite its recognition that such an ordinance "would have been rejected as arbitrary and oppressive" at an earlier date, the Court (over the dissent of Justices Van Devanter, McReynolds, and Butler) upheld the ordinance. Today's majority should heed the words of Justice Sutherland:

"Such regulations are sustained, under the complex

> conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract ***411** to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise." *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387, 47 S.Ct. 114, 118, 71 L.Ed. 303 (1926).

In our changing world one thing is certain: uncertainty will characterize predictions about the impact of new urban developments on the risks of floods, earthquakes, traffic congestion, or environmental harms. When there is doubt concerning the magnitude of those impacts, the public interest in averting them must outweigh the private interest of the commercial entrepreneur. If the government can demonstrate that the conditions it has imposed in a land use permit are rational, impartial and conducive to fulfilling the aims of a valid land use plan, a strong presumption****2330** of validity should attach to those conditions. The burden of demonstrating that those conditions have unreasonably impaired the economic value of the proposed improvement belongs squarely on the shoulders of the party challenging the state action's constitutionality. That allocation of burdens has served us well in the past. The Court has stumbled badly today by reversing it.

I respectfully dissent.

Justice SOUTER, dissenting.

This case, like *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), invites the Court to examine the relationship between conditions imposed by development permits, requiring landowners to dedicate portions of their land for use by the public, and governmental interests in mitigating the adverse effects of such development. *Nollan* declared the need for a nexus between the nature of an exaction of an interest in land (a beach easement) and the nature of governmental interests. The Court treats this case as raising a further question, not about the nature, but about the degree, of connection required between such an exaction and the ***412** adverse effects of development. The Court's opinion announces a test to address this question, but as I read the opinion, the Court does not apply that test to these facts, which do not raise the question the Court addresses.

First, as to the floodplain and greenway, the Court acknowledges that an easement of this land for open space (and presumably including the five feet required for needed creek channel improvements) is reasonably related to flood control, see *ante,* at 2317-2318, 2320, but argues that the "permanent recreational easement" for the public on the greenway is not so related, see *ante,* at 2320-2321. If that is so, it is not because of any lack of proportionality between permit condition and adverse effect, but because of a lack of any rational connection at all between exaction of a public recreational area and the governmental interest in providing for the effect of increased water runoff. That is merely an application of *Nollan* 's nexus analysis. As the Court notes, "[i]f petitioner's proposed development had somehow encroached on existing greenway space in the city, it would have been reasonable to require petitioner to provide some alternative greenway space for the public." *Ante,* at 2321. But that, of course, was not the fact, and the city of Tigard never sought to justify the public access portion of the dedication as related to flood control. It merely argued that whatever recreational uses were made of the bicycle path and the 1-foot edge on either side were incidental to the permit condition requiring dedication of the 15-foot easement for an 8-foot-wide bicycle path and for flood control, including open space requirements and relocation of the bank of the river by some 5 feet. It seems to me such incidental recreational use can stand or fall with the bicycle path, which the city justified by reference to traffic congestion. As to the relationship the Court examines, between the recreational easement and a purpose never put forth as a justification by the city, the Court unsurprisingly finds a recreation area to be unrelated to flood control.

***413** Second, as to the bicycle path, the Court again acknowledges the "theor[etically]" reasonable relationship between "the city's attempt to reduce traffic congestion by providing [a bicycle path] for alternative means of transportation," *ante,* at 2318, and the "correct" finding of the city that "the larger retail sales facility proposed by petitioner will increase traffic on the streets of the Central Business District," *ante,* at 2321. The Court only faults the city for saying

that the bicycle path "could" rather than "would" offset the increased traffic from the store, *ante*, at 2322. That again, as far as I can tell, is an application of *Nollan*, for the Court holds that the stated connection ("could offset") between traffic congestion and bicycle paths is too tenuous; only if the bicycle path "would" offset the increased traffic by some amount could the bicycle path be said to be related to the city's legitimate interest in reducing traffic congestion.

****2331** I cannot agree that the application of *Nollan* is a sound one here, since it appears that the Court has placed the burden of producing evidence of relationship on the city, despite the usual rule in cases involving the police power that the government is presumed to have acted constitutionally.[FN*] Having thus assigned the burden, the Court concludes that the city loses based on one word ("could" instead of "would"), and despite the fact that this record shows the connection the Court looks for. Dolan has put forward no evidence that ***414** the burden of granting a dedication for the bicycle path is unrelated in kind to the anticipated increase in traffic congestion, nor, if there exists a requirement that the relationship be related in degree, has Dolan shown that the exaction fails any such test. The city, by contrast, calculated the increased traffic flow that would result from Dolan's proposed development to be 435 trips per day, and its Comprehensive Plan, applied here, relied on studies showing the link between alternative modes of transportation, including bicycle paths, and reduced street traffic congestion. See, *e.g.*, App. to Brief for Respondent A-5, quoting City of Tigard's Comprehensive Plan (" 'Bicycle and pedestrian pathway systems will result in some reduction of automobile trips within the community' "). *Nollan*, therefore, is satisfied, and on that assumption the city's conditions should not be held to fail a further rough proportionality test or any other that might be devised to give meaning to the constitutional limits. As Members of this Court have said before, "the common zoning regulations requiring subdividers to ... dedicate certain areas to public streets, are in accord with our constitutional traditions because the proposed property use would otherwise be the cause of excessive congestion." *Pennell v. San Jose*, 485 U.S. 1, 20, 108 S.Ct. 849, 862, 99 L.Ed.2d 1 (1988) (SCALIA, J., concurring in part and dissenting in part). The bicycle path permit condition is fundamentally no different from these.

FN* See, *e.g.*, *Goldblatt v. Hempstead*, 369 U.S. 590, 594-596, 82 S.Ct. 987, 990, 8 L.Ed.2d 130 (1962); *United States v. Sperry Corp.*, 493 U.S. 52, 60, 110 S.Ct. 387, 393-394, 107 L.Ed.2d 290 (1989). The majority characterizes this case as involving an "adjudicative decision" to impose permit conditions, *ante*, at 2390, n. 8, but the permit conditions were imposed pursuant to Tigard's Community Development Code. See, *e.g.*, § 18.84.040, App. to Brief for Respondent B-26. The adjudication here was of Dolan's requested variance from the permit conditions otherwise required to be imposed by the Code. This case raises no question about discriminatory, or "reverse spot," zoning, which "singles out a particular parcel for different, less favorable treatment than the neighboring ones." *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 132, 98 S.Ct. 2646, 2663, 57 L.Ed.2d 631 (1978).

In any event, on my reading, the Court's conclusions about the city's vulnerability carry the Court no further than *Nollan* has gone already, and I do not view this case as a suitable vehicle for taking the law beyond that point. The right case for the enunciation of takings doctrine seems hard to spot. See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1076, 112 S.Ct. 2886, 2925, 120 L.Ed.2d 798 (1992) (statement of SOUTER, J.).

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512 U.S. 374, 114 S.Ct. 2309, 38 ERC 1769, 129 L.Ed.2d 304, 62 USLW 4576, 24 Envtl. L. Rep. 21,083

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Supreme Court of California
RICHARD K. EHRLICH, Plaintiff and Appellant,
v.
CITY OF CULVER CITY et al., Defendants and Appellants.

No. S033642.
Mar 5, 1996.

SUMMARY

A developer planned to build a multi-unit residential condominium on his property, on which he had previously operated a private tennis club and recreational facility. The city found that there was a shortage of recreational facilities in the city and required the developer to pay a mitigation fee of $280,000 as a condition for approval of his project. The city also imposed a $33,200 "art in public places" fee in lieu of placing art on the development site. Upon the developer's petition for a writ of mandate, the trial court invalidated the $280,000 recreation fee, finding that there was no reasonable relationship between the developer's project and the need for public recreational facilities, but the trial court upheld the art fee. (Superior Court of Los Angeles County, No. C730079, John Zebrowski, Judge.) The Court of Appeal, Second Dist., Div. Five, No. B055523, reversed the judgment to the extent it invalidated the recreation fee, and it affirmed the portion of the judgment upholding the art fee. The United States Supreme Court granted the developer's petition for a writ of certiorari, vacated the Court of Appeal's judgment, and remanded the case to the Court of Appeal for reconsideration in light of the Supreme Court's recent decision. On remand, the Court of Appeal reached the same result as in its earlier decision.

The California Supreme Court reversed the judgment of the Court of Appeal and remanded the cause to that court to order the case returned to the city. The court held that the tests formulated by the United States Supreme Court for determining whether a compensable regulatory taking has occurred under the takings clause of U.S. Const., 5th Amend., applied, under the circumstances of this case, to the monetary exaction imposed by the city; the high court's heightened takings clause standard does not apply only to cases in which the local land use authority requires the developer to dedicate real property to public use as a condition of permit approval. Also, the lead opinion stated that the federal tests apply to the requirement of the Mitigation Fee Act (Gov. Code, § 66000 et seq.) that the local regulatory authority demonstrate a "reasonable relationship" between the monetary exaction and the public impact of the development. (Per Arabian, J., Lucas, C. J., and George, J.) Under the federal standard, the court held that the city met its burden of showing the required connection between the rezoning of the property from recreational use and the imposition of a monetary exaction to be expended in support of recreational purposes as a means of mitigating that loss. However, the court held that the record was insufficient to sustain the city's determination that the developer pay the $280,000 fee as a condition for approval of the project. Because the city might justify the imposition of some fee, remand to the city for further proceedings was appropriate. The court further held that the city's imposition of the "art in public places" fee was valid. (Opinion by Arabian, J., [FN*] with Lucas, C. J., and George, J., concurring. Concurring opinion by Mosk, J. Concurring and dissenting opinion by Kennard, J., with Baxter, J., concurring. Concurring and dissenting opinion by Werdegar, J.)

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Eminent Domain § 18--Compensation--What Constitutes Taking--Dedication of Land--Test for Validity.

The Mitigation Fee Act (Gov. Code, § 66000 et seq.) codifies, as the statutory standard applicable by definition to nonpossessory monetary exactions, the "reasonable relationship" standard employed in California and elsewhere to measure the validity of required dedications of land, or fees imposed in lieu of such dedications, that are challenged as takings under U.S. Const., 5th and 14th Amends. (Per Arabian, J., Lucas, C. J., and George, J.)

(2) Eminent Domain § 18--Compensation--What Constitutes Taking--Dedication of Land--Test for Validity--Individualized Exaction--Federal Standards.

In cases in which a property owner challenges an individualized exaction imposed as a condition of issuance of a development permit as an uncompensated taking under U.S. Const., 5th Amend., decisions of the United States Supreme Court underline the separate nature of the takings clause as an independent constitutional guarantee, one that is not only distinct from the commands of the due process and equal protection provisions of the federal Constitution, but which embodies a standard of judicial review that is greater than the "minimal level of scrutiny" mandated by those provisions. The "reasonable relationship" language of the Mitigation Fee Act (Gov. Code, § 66000 et seq.) should be construed in light of the Supreme Court's "rough proportionality" test for two reasons. First, the act authorizes protests to an exaction in accordance with the procedures provided in Gov. Code, § 66020. Second, because the Legislature incorporated a standard that generally corresponds to the one reflected in the high court's takings jurisprudence, it is appropriate for California courts to interpret the statutory standard in a manner consistent with the high court's decisions. The term "reasonable relationship" embraces both constitutional and statutory meanings which, for all practical purposes, have merged, and developers who wish to challenge a development fee on either statutory or constitutional grounds must do so via the statutory framework provided by the act. (Per Arabian, J., Lucas, C. J., and George, J.)

(3a, 3b) Eminent Domain § 18--Compensation--What Constitutes Taking-- Development Permit That Exacts Fee as Condition of Issuance--Tests for Validity:Building Regulations § 3--Building Permits.

The following test applies to a property owner's challenge to a city's monetary exaction of a mitigation fee as a condition to approval of a development plan. Where the local permit authority seeks to justify a given exaction as an alternative to denying a proposed use, the reviewing court must scrutinize the instrumental efficacy of the permit condition in order to determine whether it logically furthers the same regulatory goal as would outright denial of a development permit. The court must also determine whether the factual findings made by the permitting body support the condition as one that is more or less proportional, in both nature and scope, to the public impact of the proposed development. However, although these tests apply to a monetary exaction, this heightened standard of scrutiny is triggered by a relatively narrow class of land-use cases-those exhibiting circumstances that increase the risk that the local permitting authority will seek to avoid the obligation to pay just compensation. Moreover, even in cases involving nonpossessory exactions, the local authority must show an essential nexus between the imposition of a monetary exaction and the public impact of a particular land use. Also, there must be a rough proportionality between the public impact of the land-use change and the exacted fee.

(4a, 4b, 4c, 4d, 4e) Eminent Domain § 18--Compensation--What Constitutes Taking--Development Permit That Exacts Fee as Condition of Issuance--Mitigation Fee for Loss of Recreational Facility:Building Regulations § 3--Building Permits.

In requiring a developer to pay a mitigation fee of $280,000 as a condition for approval of his condominium project on his property, on which he had previously operated a private recreational facility, a city met its burden of showing the required connection between the rezoning of the property from recreational use and the imposition of a monetary exaction to be expended in support of recreational purposes as a means of mitigating that loss. The record indicated that there was a shortage of recreational facilities in the city, and the city had legitimate authority to development impact fees for park and recreational purposes. However, the city did not meet its burden of showing a rough proportionality between the public impact of the land-use change and the recreational fee. Generalized statements as to the necessary connection between the required dedication and the proposed development are insufficient. The city imposed its $280,000 recreation fee as partial compensation for the loss of some $800,000 in recreational improvements that were formerly located on the developer's property. But it was error to measure the lost recreational benefits by the lost value of the developer's health club. The city's loss was not the loss of any particular recreational facility, but the loss of property reserved for private recreational use. This is not to say that no recreational fee was warranted. Thus, remand to the city was required for the city to determine to what extent approval of the developer's requested land-use changes justified the imposition of a recreation fee as a means of compensating it for the

additional costs of attracting the development of comparable private recreational facilities for its residents.
[See 8 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 939; 7 **Miller & Starr,** Cal. Real Estate (2d ed. 1990) § 20:113 et seq., § 23:18 et seq. See also Validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof, note, 43 **A.L.R.3d** 862.]
(5a, 5b, 5c, 5d) Constitutional Law § 48--Police Power--Subjects of Regulation--Land and Its Uses.

A limitation on use of land is constitutional unless the restriction does not substantially advance legitimate state interests or denies the owner economically viable use of his or her land. It is not an unreasonable use of the police power for a city to prescribe not only broad categories of land use, such as "commercial" and "residential," but also to specify, through a general plan, specific plan, and zoning regulations, the types of businesses that can be carried on at a given site, so long as the restrictions meet the above two-part standard.

(6a, 6b, 6c) Zoning and Planning § 1--Purpose

The general purpose of zoning and planning is to regulate the use of land to promote the public welfare, a power the courts have construed very broadly. Indeed, one of the traditional uses of the police power lies in providing citizens adequate recreational opportunities.

(7a, 7b, 7c, 7d) Eminent Domain § 18--Compensation--What Constitutes Taking--Development Permit That Exacts Fee as Condition of Issuance--"Art in Public Places" Fee:Building Regulations § 3--Building Permits.

A city's imposition on a developer, who proposed building a multi-unit condominium on his property, of a $33,200 "art in public places" fee in lieu of the placement of art on the development site did not constitute an unconstitutional taking under U.S. Const., 5th Amend. Rather than being an exaction of the kind subject to takings analysis, the requirement to provide either art or a cash equivalent thereof was more akin to traditional land-use regulations imposing minimal building setbacks, parking and lighting conditions, landscaping requirements, and other design conditions such as color schemes, building materials, and architectural amenities. Such aesthetic conditions have long been held to be valid exercises of the city's traditional police power and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property. The requirement of providing art in an area of the project reasonably accessible to the public was, like other design and landscaping requirements, a kind of aesthetic control well within the authority of the city to impose.
[Aesthetic objectives or considerations as affecting validity of zoning ordinance, note, 21 **A.L.R.3d** 1222.]
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ARABIAN, J. [FN*]

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

This case comes to us by a circuitous route, having been remanded after the United States Supreme Court issued a writ of certiorari to the Court of Appeal and vacated that court's judgment in favor of defendant City of Culver City. The high court's order of remand directed the Court of Appeal to reexamine its prior judgment "in light of *Dolan v. City of Tigard* (1994) 512 U.S. 374 [129 L.Ed.2d 304, 114 S.Ct. 2309]...." (*Ehrlich v. City of Culver City* (1994) 512 U.S. ___ [129 L.Ed.2d 854, 114 S.Ct. 2731].)

Following remand, a divided Court of Appeal reaffirmed its earlier ruling in favor of defendant city in an unpublished opinion. We then granted the petition for review by plaintiff, a property owner and developer, to consider important and unsettled questions concerning the extent to which the high court's opinions in *Dolan v. City of Tigard* (1994) 512 U.S. 374 [129 L.Ed.2d 304, 114 S.Ct. 2309] (*Dolan*) and the earlier case of *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 [97 L.Ed.2d 677, 107 S.Ct. 3141] (*Nollan*) apply to development permits that exact a *fee* as a condition of issuance, rather than, as in both *Nollan* and *Dolan*, the *possessory* dedication of real property.

As we explain, we conclude that the tests formulated by the high court in its *Dolan* and *Nollan* opinions for determining whether a compensable regulatory taking has occurred under the takings clause of the Fifth Amendment to the federal Constitution apply, *under the circumstances of this case*, to the *monetary* exaction imposed by Culver City as a condition of approving plaintiff's request that the real property in suit be rezoned to permit the construction of a multi-unit residential condominium. We thus reject the city's contention that the heightened takings clause standard formulated by the court in *Nollan* and *Dolan* applies *only* to cases in which the local land use authority requires the developer to dedicate real property to public use as a condition of permit approval. ***860**

We arrive at this conclusion not by reference to the constitutional takings clause alone, but within the statutory framework presented by the Mitigation Fee Act. (Gov. Code, § 66000 et seq.) We will conclude in this case that, in order to avoid substantial questions concerning the constitutional sufficiency of the legislative standard embodied in the act, the tests formulated by the high court in its *Dolan* and *Nollan* opinions for determining when a regulatory taking has occurred apply here to the act's requirement that the local regulatory authority demonstrate a "reasonable relationship" between the monetary exaction and the public impact of the development.

We thus interpret the act's "reasonable relationship" standard, as applied to the development fee at issue in this case, as embodying the standard of review formulated by the high court in its *Nollan* and *Dolan* opinions -proof by the local permitting authority of both an "essential nexus" or relationship between the permit condition and the public impact of the proposed development, and of a "rough proportionality" between the magnitude of the fiscal exaction and the effects of the proposed development.

Applying this standard in this case, we conclude, first, that the city has met its burden of demonstrating the required connection or nexus between the rezoning-to permit a residential use of a parcel of land zoned for private recreational use-and the imposition of a monetary exaction to be expended in support of recreational purposes as a means of mitigating that loss. We conclude, however, that the record before us is *in*sufficient to sustain the city's determination that plaintiff pay a so-called mitigation fee of $280,000 as a condition for approval of his request that the property be rezoned to permit the construction of a condominium project. Because the city may be able to justify the imposition of *some* fee under the recently minted standard of *Dolan*, we follow the Oregon Supreme Court's disposition in that case and direct that the cause be remanded to the city for additional proceedings in accordance with this opinion.

I. Factual and Procedural Background

A

Between 1973 and 1975, plaintiff acquired a vacant 2.4-acre lot on Overland Avenue in Culver City and obtained city approval to develop the site as a private tennis club and recreational facility. At plaintiff's request, the city amended its zoning and general plan ordinances governing uses on the property from a split zone R-1 (single-family residential) and C-2 (retail ***861** commercial) to C-3 (commercial). A specific plan was also adopted by the city providing for the development of a privately operated tennis club and recreational facility. [FN1] A report prepared by city planning officials in 1974 recommending approval of the development permit recognized that "the need for additional tennis facilities in this city is a real one"; the

planning commission resolution recommending approval likewise observed that "[t]he proposed zoning of the property in conjunction with the specific plan will provide a suitably located area within the City for additional tennis club facilities in the form of a private tennis club." From 1975 to 1988, plaintiff, alone or through others, operated the sports complex-consisting by then of a swimming pool, five tennis courts, racquetball courts, and weight training and aerobic facilities-on the site.

> FN1 A "specific plan" implements and refines the general plan by allowing for greater specificity as to permissible uses. (Gov. Code, § 65450.)

In 1981, in response to financial losses, plaintiff applied to the city for a change in land use in order to construct an office building on the site; that application was abandoned after the city planning commission recommended against approval on the ground that the existing sports and tennis club provided a needed commercial recreational facility within the city. The club continued in operation under a series of managers until August 1988, when plaintiff closed it as a result of continuing financial losses. The following month, he again applied to the city for an amendment to the general plan, a zoning change and amendment of the specific plan to allow construction of a 30-unit condominium complex valued at $10 million.

Shortly after the submission of plaintiff's application, the city expressed an interest in acquiring the property for operation as a municipally owned sports facility and hired outside consultants to study the feasibility of the acquisition. The impetus behind the city's interest was a perceived deficiency in existing municipal recreational facilities. Buying the property, according to a city council staff report, offered the "opportunity to preserve an existing sports/recreational facility for public use and relieve pressure on existing facilities." The feasibility study concluded that, by national standards, the city was two to four tennis courts short, and deficient in the number of its public swimming pools and gymnasiums. The study also concluded that plaintiff's club had encountered financial problems through a combination of management problems, poor maintenance, and a lack of competitive amenities offered by other clubs. Without extensive capital improvements, the study concluded, the club could not "compete financially in today's health and fitness market."

Based upon the findings of the study, the city concluded that it lacked the funds to purchase and operate the club as a general public sports complex, ***862** and would incur substantial financial risks if it purchased and operated the club on a limited membership, fee-for-service basis. In April 1989, the city decided not to purchase the property. At the same time, the city council disapproved plaintiff's application based on concerns over the loss of a recreational land use needed by the community. In the meantime, plaintiff obtained a demolition permit and tore down the existing site improvements. The still-useful equipment, including the tennis court lights, nets, and lockers, he donated to the city.

Following the rejection of his application, plaintiff entered into discussions with members of the city council and city staff in an attempt to restructure the project. He asserts that he was informed the project would not be approved *unless* he agreed to build new recreational facilities for the city. In response, plaintiff apparently raised the possibility of constructing four new municipal tennis courts. During this time period plaintiff filed, but did not serve, a petition for writ of mandate and complaint for damages commencing this lawsuit. Following a closed-door meeting ostensibly to discuss the pending litigation, the city council voted to approve plaintiff's application conditioned upon the payment of certain monetary exactions. In lieu of the construction of four tennis courts as a condition of approval, the city required the payment of $280,000 "to be used" as stated in the ratifying ordinance, "for additional [public] recreational facilities as directed by the City Council." The minutes of the city council meeting state that the $280,000 fee was to be used "for partial replacement of the lost recreational facilities ..." occasioned by the specific plan amendment. The amount of the fee was based upon a city study which showed that the replacement costs for the recreational facilities "lost" as a result of amending the specific plan would be $250,000 to $280,000 for the pool, $135,000 to 150,000 for the paddle tennis courts, and $275,000 to $300,000 for the tennis courts.

In addition to the $280,000 recreation fee, the city also required plaintiff to pay an exaction under the city's "art in public places" program. By municipal ordinance, new residential development projects of

more than four units, as well as all commercial, industrial, and public building projects with a building valuation exceeding $500,000, are required to provide "art work" (as defined by the ordinance) for the project in an amount equal to 1 percent of the total building valuation, or to pay an equal amount in cash to the city art fund. The city valued plaintiff's project at $3.2 million. He elected initially to pay the fee, which totaled $33,200, but his successor in interest ***863** apparently subsequently placed art of his own choosing on the site rather than pay the in-lieu fee. [FN2]

> FN2 Plaintiff was also apparently required to pay a $30,000 in-lieu "parkland" fee pursuant to section 33-E.1 of the Culver City Municipal Code, to provide ostensibly for local park and recreational facilities to serve the residents of plaintiff's condominium development. Plaintiff has not challenged this in-lieu fee in the present action.

Thereafter, plaintiff filed with the city formal written protests to the imposition of the $280,000 recreation fee and the $33,200 art in public places exaction, pursuant to Government Code sections 66020 and 66021. The city rejected both protests. Plaintiff then amended his complaint to allege that imposition of the fees amounted to an unconstitutional taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and article I, section 19 of the California Constitution. [FN3] The parties later entered into an agreement whereby plaintiff agreed to pay the $280,000 recreation fee under protest in exchange for the necessary building and grading permits for the project. Plaintiff retained the right to proceed with his lawsuit, and agreed that the city would obtain a lien on the property as security for payment of the $280,000 fee. The site was subsequently developed and residential units were sold to the public.

> FN3 The Fifth Amendment provides that "No person shall be ... deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation." The Fifth Amendment was made applicable to the states through the Fourteenth Amendment in *Chicago, B & Q Ry. Co*. v. *Chicago* (1897) 166 U.S. 226 [41 L.Ed. 979, 17 S.Ct. 581].
>
> The parallel provision of the California Constitution provides, "Private property may be taken or damaged for public use only when just compensation ... has first been paid to, or into court for, the owner." (Cal. Const., art. I, § 19.)

B

The petition for writ of mandate, by which plaintiff sought to set aside the $280,000 recreation fee and the $33,200 in-lieu art fee as unconstitutional takings, was bifurcated from the balance of the complaint. Following a hearing, the trial court invalidated the $280,000 recreation fee, holding that there was "no reasonable relation ... between the plaintiff's project and the need for public tennis courts in the City." The trial court concluded that the exaction was "simply an effort to shift the cost of providing a public benefit to one no more responsible for the need than any other taxpayer." The trial court declined to set aside the $33,200 art fee, however, ruling that it was not an unconstitutional taking.

The Court of Appeal initially affirmed the judgment in its entirety but on rehearing modified its opinion to reverse that portion of the judgment ***864** invalidating the $280,000 recreation fee. (*Ehrlich v. City of Culver City* (1993) 15 Cal.App.4th 1737 [19 Cal.Rptr.2d 468].) The Court of Appeal found there was a "substantial nexus" (*id.* at p. 1749) between the proposed condominium project and the $280,000 exaction. "The mitigation fee was imposed to compensate the City for the benefit conferred on the developer by the City's approval of the townhome project and for the burden to the community resulting from the loss of recreational facilities." (*Id.* at p. 1750.) Thus, the recreation fee was not, in the Court of Appeal's judgment, an unconstitutional taking without just compensation. The Court of Appeal also affirmed that portion of the judgment upholding the in-lieu art fee.

Plaintiff then sought certiorari from the United States Supreme Court. The high court granted his petition, vacated the Court of Appeal judgment, and remanded the case for further consideration in light of its opinion in *Dolan*. (*Ehrlich v. City of Culver City*, *supra*, 512 U.S. ___ [129 L.Ed.2d 854, 114 S.Ct. 2731].) As noted, following remand, a divided Court of Appeal reached the identical result. In addition to its earlier conclusions, it found that the $280,000 fee

was "roughly proportional" in nature and extent to the needs generated by the project, and therefore passed muster under *Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at pp. 2319-2320]. We granted plaintiff's petition for review and now reverse.

II. The Mitigation Fee Act (Gov. Code, § 66000 et seq.)

As noted, this case arises within the statutory framework of the Mitigation Fee Act (the Act), introduced in the Legislature as Assembly Bill No. 1600, 1987-1988 Regular Session, and enacted as Statutes 1987, chapter 927, effective January 1, 1989. The Act, codified as sections 66000-66003 of the Government Code, sets forth procedures for protesting the imposition of fees and other monetary exactions imposed on a development by a local agency. As its legislative history evinces, the Act was passed by the Legislature "in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects." (*Centex Real Estate Corp. v. City of Vallejo* (1993) 19 Cal.App.4th 1358, 1361 [24 Cal.Rptr.2d 48]; Sen. Local Gov. Com. analysis of Assem. Bill No. 1600 (1987-1988 Reg. Sess.) p. 1; see also *Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320 [4 Cal.Rptr.2d 897].)

Plaintiff complied with the requirements of Government Code section 66020 by filing a protest with the city which enumerated all of the bases of his challenge to the recreational and art fees, including his constitutional ***865** takings claim. These claims were subsequently set forth in the complaint and writ petition. In the subsequent agreement between plaintiff and the city, plaintiff agreed to pay the disputed fees and to have a lien recorded against the property, and the city agreed to allow the project to proceed, and further stipulated that "[n]othing in this agreement shall in any way waive or restrict [plaintiff's] rights to pursue the protest [plaintiff] has made under [former] Government Code § 66008 [now section 66020] and by the above-mentioned lawsuit." Thus, the agreement expressly preserved both the statutory claim under the Act and the takings claims set forth in plaintiff's statutory protest and in his lawsuit. [FN4]

FN4 In its brief on the merits, the city has raised two additional issues. It asserts that plaintiff preserved *only* his right to challenge the exactions under the Act. This argument was not raised below or in a counterpetition for review; it is therefore not cognizable before this court. (Cal. Rules of Court, rule 29(b)(1).) Furthermore, it is factually inaccurate. The city also asserts that the takings challenge is somehow not "ripe" because plaintiff waived all but his statutory challenge to the fees. The argument was not raised below and is therefore not cognizable before this court. Moreover, as noted above, it is also factually untenable.

Although for the most part procedural in nature, the Act also embodies a statutory standard against which monetary exactions by local governments subject to its provisions are measured. Government Code section 66001 requires the local agency to determine "how there is a *reasonable relationship*" between the proposed use of a given exaction and both "the type of development project" and "the need for the public facility and the type of development project on which the fee is imposed." (Gov. Code, § 66001, subd. (a)(3), (4), italics added.) In addition, the local agency must determine how there is *a "reasonable relationship*" between "the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed." (*Id.*, § 66001, subd. (b), italics added.)

(1) The Act thus codifies, as the statutory standard applicable by definition to nonpossessory monetary exactions, the "reasonable relationship" standard employed in California and elsewhere to measure the validity of required dedications of land (or fees imposed in lieu of such dedications) that are challenged under the Fifth and Fourteenth Amendments. (See, e.g., *Ayres v. City Council of Los Angeles* (1949) 34 Cal.2d 31 [207 P.2d 1, 11 A.L.R.2d 503]; *Associated Home Builders etc., Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847] (*Associated Home Builders); Grupe v. California Coastal Com. (1985) 166 Cal.App.3d 148 [212 Cal.Rptr. 5788]; cf. Nollan, supra*, 483 U.S at pp. 839-840 [97 L.Ed.2d at pp. 690-691]; *Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2319] ["Some form of the reasonable relationship test has been adopted in many ... jurisdictions."].) ***866**

(2) As we explain, the high court's opinions in *Nollan* and *Dolan* cast substantial doubt on the suffi-

ciency of the *Associated Home Builders* standard, at least as applied to cases such as this one, where the property owner challenges an individualized exaction imposed as a condition of issuance of a development permit as an uncompensated taking under the Fifth Amendment. The high court's recent takings jurisprudence, as we comprehend it, underlines the separate nature of the takings clause as an independent constitutional guarantee, one that is not only distinct from the commands of the due process and equal protection provisions of the federal Constitution, but which embodies a standard of judicial review that is greater than the "minimal level of scrutiny" mandated by those provisions. (*Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2319].)

We do not believe, however, that these conceptual obscurities need cause problems in practice. Although the Act predates the formulation adopted by the high court in *Dolan*, we believe the Act's "reasonable relationship" language should be construed in light of *Dolan*'s "rough proportionality" test for two reasons. First, the statutory scheme authorizes "*any party* on whom a fee, tax, assessment, dedication, reservation, or *other exaction* has been imposed, the payment or performance of which is required to obtain governmental approval of a development," to protest such an imposition by following the procedures provided in section 66020 of the Act. (Gov. Code, § 66021, subd. (a), italics added.) Such a broadly formulated and unqualified authorization is consistent with the view that the Legislature intended to require *all* protests to a development fee that challenge the sufficiency of its relationship to the effects attributable to a development project-regardless of the legal underpinnings of the protest-to be channeled through the administrative procedures mandated by the Act. Such claims would encompass not only statutory grounds, but contentions that a given imposition offends the commands of the takings clause of the Fifth Amendment. Requiring that constitutionally based claims be determined under the provisions of the Act does not itself raise a constitutional issue " '[i]f the government has provided an adequate process for obtaining compensation, and if resort to that process "yield[s] just compensation," ....' " (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 13 [32 Cal.Rptr.2d 244, 876 P.2d 1043], quoting *Williamson Planning Comm'n v. Hamilton Bank* (1985) 473 U.S. 172, 194-195 [87 L.Ed.2d 126, 143-144, 105 S.Ct. 3108].) This is so because the Fifth Amendment "leaves to the state ... the procedures by which compensation may be sought." (8 Cal.4th at p. 13.)

Second, because the Legislature incorporated into Government Code section 66001, subdivision (a)(3) of the Act a standard that generally corresponds to the one reflected in the high court's takings jurisprudence (see ***867** *Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2319] ["We think the 'reasonable relationship' test adopted by a majority of the state courts is closer to the federal constitutional norm .... [W]e do not adopt it as such, partly because the term ... seems confusingly similar to the term 'rational basis' ...."]), it is appropriate for this court to interpret the statutory standard in a manner consistent with the high court's decisions in *Nollan* and *Dolan* so that a development fee imposed pursuant to the act, and that satisfies its requirements, will not be subject to challenge on constitutional grounds. By interpreting the "reasonable relationship" standard adopted by Government Code section 66001 as imposing a requirement consistent with the *Nollan/Dolan* standard, we serve the legislative purpose of protecting developers from disproportionate and excessive fees, and carry out the legislative intent of imposing a statutory relationship between monetary exaction and development project that accurately reflects the prevailing takings clause standard. [FN5]

> FN5 Contrary to the assertion of Justice Kennard that "[t]his case was litigated under the takings clause, not our state's Mitigation Fee Act; thus, there is no need to construe the Mitigation Fee Act to decide this case" (conc. & dis. opn. of Kennard, J., *post*, at p. 903), plaintiff complied with the requirements of the Act by asserting both statutory *and* the constitutional takings claims in his protest. (See fn. 4, *ante*, at p. 865.) We resolve plaintiff's claim in the context of the Act for the reasons set forth in the main text, that is, the unqualified statutory language channeling all protests to development fees through the procedures prescribed by the Act and the formulaic identity of the statutory and constitutional standards.

We must, in other words, recognize that in the wake of *Dolan* the term "reasonable relationship" embraces both constitutional and statutory meanings which, for all practical purposes, have merged *to the extent* that the *Dolan* decision applies to development fees-an issue we address below. Thus, developers who

wish to challenge a development fee on either statutory or constitutional grounds must do so via the statutory framework provided by the Act. (Cf. *Hensler v. City of Glendale, supra*, 8 Cal.4th at pp. 13-15.)

III. "Leveraging" the Permit Power and the Takings Clause

(3a) Our account of the factual record should make it clear that we view this case as one presenting the earmarks of what has come to be characterized in recent takings jurisprudence as a form of regulatory "leveraging." We mean to convey by such a characterization what Justice Scalia appears to have had in mind when, describing the California Coastal Commission's exaction of a beachfront easement from a homeowner as a condition of ***868** issuing a development permit, he wrote in *Nollan, supra*, 483 U.S. 825, that "One would expect that a [permit] regime in which this kind of *leveraging* [i.e., the imposition of *unrelated* exactions as a condition for granting permit approval] of the police power is allowed would produce stringent land-use regulation which the State then waives to accomplish other purposes ...." (*Id.* at p. 837, fn. 5 [97 L.Ed.2d at p. 690], italics added.)

In our view, the intermediate standard of judicial scrutiny formulated by the high court in *Nollan* and *Dolan* is intended to address just such indicators in land use "bargains" between property owners and regulatory bodies-those in which the local government conditions permit approval for a given use on the owner's surrender of benefits which *purportedly* offset the impact of the proposed development. It is in this paradigmatic permit context-where the individual property owner-developer seeks to negotiate approval of a planned development-that the combined *Nollan* and *Dolan* test quintessentially applies. Its effect, at least as to those conditions that fail to exhibit the constitutionally required nexus, is to rule out the imposition of a certain species of regulatory conditions: those which are either logically unrelated to legitimate regulatory objectives or fail to exhibit the constitutionally required "fit" between conditional means and legitimate governmental ends.

Where the local permit authority seeks to justify a given exaction as an alternative to denying a proposed use, *Nollan* requires a reviewing court to scrutinize the instrumental efficacy of the permit condition in order to determine whether it logically furthers the *same* regulatory goal as would outright denial of a development permit. A court must also, under the standard formulated in *Dolan*, determine whether the factual findings made by the permitting body support the condition as one that is more or less proportional, in both nature and scope, to the public impact of the proposed development.

Thus, although we conclude that the combined test of *Nollan* and *Dolan* applies to the *monetary* exaction imposed by Culver City in this case, we also conclude that the heightened standard of scrutiny is triggered by a relatively narrow class of land use cases-those exhibiting circumstances which increase the risk that the local permitting authority will seek to avoid the obligation to pay just compensation. Neither *Nollan* nor *Dolan* is, after all, a conventional regulatory takings case. Rather, as the court's rationale for its result in *Nollan* demonstrates, both are cases in which the local government attached a condition to the issuance of a development permit which, *but for* the claim that the exaction is justified by the greater power to deny a permit altogether, would have amounted to an uncompensated requisition of private property. ***869**

As Justice Scalia's opinion in *Nollan, supra*, 483 U.S. 825, makes clear, such a discretionary context presents an inherent and heightened risk that local government will manipulate the police power to impose conditions *unrelated* to legitimate land use regulatory ends, thereby avoiding what would otherwise be an obligation to pay just compensation. In such a context, the heightened *Nollan-Dolan* standard of scrutiny works to dispel such concerns by assuring a constitutionally sufficient link between ends and means. It is the imposition of land-use conditions in individual cases, authorized by a permit scheme which by its nature allows for both the discretionary deployment of the police power and an enhanced potential for its abuse, that constitutes the sine qua non for application of the intermediate standard of scrutiny formulated by the court in *Nollan* and *Dolan*.

The remainder of our opinion seeks to demonstrate the accuracy of these conclusions, which we then apply to the record before us in this case. [FN6]

FN6 Scholarly comment on the two cases is almost unmanageably large. (See, e.g., Kmiec, *At Last, The Supreme Court Solves the Takings Puzzle* (1995) 19 Harv. J. L. &

Pub. Pol'y. 147; Kendall & Ryan, *"Paying" for the Change: Using Eminent Domain to Secure Exactions and Sidestep Nollan and Dolan* (1995) 81 Va. L. Rev. 1801; Funk, *Reading Dolan v. City of Tigard* (1995) 25 Envtl. L. 127; Huffman, *Dolan v. City of Tigard: Another Step in the Right Direction* (1995) 25 Envtl. L. at p. 143; Kushner, *Property and Mysticism: The Legality of Exactions as a Condition for Public Development Approval in the Time of the Rehnquist Court* (1992) 8 J. Land Use & Envtl. L. 53; Been, *'Exit' as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine* (1991) 91 Colum. L. Rev. 473; Notes, " *'Take' My Beach Please!": Nollan v. California Coastal Commission and a Rational-Nexus Constitutional Analysis of Development Exactions* (1989) 69 B. U. L. Rev. 823; Kmiec, *The Original Understanding of the Taking Clause Is Neither Weak Nor Obtuse* (1988) 88 Colum. L. Rev. 1630; Lawrence, *Means, Motives, and Takings: The Nexus Test of Nollan v. California Coastal Commission* (1988) 12 Harv. Envtl. L. Rev. 231; Epstein, *Unconstitutional Conditions, State Power, and the Limits of Consent* (1988) 102 Harv. L. Rev. 1, 58; Michelman, *Takings, 1987* (1988) 88 Colum. L. Rev. 1600; Epstein, *Takings: Descent and Resurrection* (1987) 1987 Sup. Ct. Rev. 1; Karlin, *Back to the Future: From Nollan to Lochner* (1988) 17 Sw.U. L. Rev. 627; Peterson, *Land Use Regulatory 'Takings' Revisited: The New Supreme Court Approaches* (1988) 39 Hastings L. J. 335; Falik & Shimko, *The "Takings" Nexus-The Supreme Court Chooses a New Direction in Land-Use Planning: A View From California* (1988) 39 Hastings L. J. 359; Note: *Taking a Step Back: A Reconsideration of the Takings Test of Nollan v. California Coastal Commission (1988) 102 Harv. L. Rev. 448; The Supreme Court-Leading Cases (1988) 101 Harv. L. Rev. 119, 240.)*

A. Nollan and the "Essential Nexus" Standard

In *Nollan, supra*, 483 U.S. 825, residential property owners challenged a requirement of the California Coastal Commission that they grant a lateral easement for public access across the back (or seaside) of their beachfront property as a condition for approval of a building permit to construct a larger ***870** beach house. The issue, as the high court framed it, was not whether the permit condition would have deprived the Nollans of all economically viable use of their property (it would not have), but rather whether the exaction furthered a legitimate state interest. The Coastal Commission argued that the easement condition was necessary to foster "visual access" to the beach and to overcome the "psychological barrier" to its use created by shorefront development. (483 U.S. at p. 835 [97 L.Ed.2d at p. 688].)

The Supreme Court assumed that the purposes advanced by the Coastal Commission represented legitimate state interests and were, at least in the abstract, constitutionally inoffensive. (483 U.S. at pp. 835-836 [97 L.Ed.2d at p. 688].) The court explained, however, that "[t]he evident constitutional propriety disappears ... if the [permit] condition ... utterly fails to further the end advanced as the justification for the prohibition." (*Id.* at p. 837 [97 L.Ed.2d at p. 689].) When "that *essential nexus* is eliminated," the court observed, the legitimacy of the exaction is undermined and it "becomes, quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation." (*Ibid.*, italics added.) Applying the newly minted "essential nexus" standard, the court found the required relationship between the Nollans' permit condition and the asserted state interest to be absent. The permit condition was an easement for *lateral* access to allow visitors to traverse the Nollans' property while passing from one beach to another. The court found it "quite impossible to understand" how such an easement furthered the "visual access" or lowered the "psychological barriers" of people *already* on the beach. (*Id.* at p. 838 [97 L.Ed.2d at p. 690].) It was this absence of a link between the permit condition and the commission's purported public purpose for requiring it that made the exaction a taking. (*Id.* at pp. 841-842 [97 L.Ed.2d at pp. 691-693].) [FN7] ***871**

FN7 The *Nollan* majority also made clear that the standard for evaluating a takings claim differs from that applied to a due process challenge. The latter, the majority explained, requires merely that the state "could rationally have decided" that the land-use regulation adopted could achieve its objective, and thus invokes only a minimal level of judicial review. (483 U.S. at p. 834,

fn. 3 [97 L.Ed.2d at p. 688], italics omitted.) To survive a takings claim, however, the court stressed that the regulation must "substantially advance" a legitimate state interest. (*Ibid.*) Thus, the *Nollan* majority consciously embraced what Justice Brennan had critically characterized as a more "demanding standard" (483 U.S. at p. 848 [97 L.Ed.2d at p. 696] (dis. opn. of Brennan, J.)) requiring a more "precise fit between the forms of burden and [the permit] condition ...." than had previously been demanded for purposes of due process. (*Id.* at p. 847 [97 L.Ed.2d at p. 696].)

In a particularly expressive rejoinder to Justice Brennan, the *Nollan* majority rejected the argument that the easement condition represented a reasonable "exchange" in return for the "benefit" of the development permit, declaring that "the right to build on one's own property-even though its exercise can be subjected to legitimate permitting requirements-cannot remotely be described as a 'governmental benefit.' " (483 U.S. at pp. 833-834, fn. 2 [97 L.Ed.2d at p. 687].)

B. Dolan and the "Rough Proportionality" Standard

The "essential nexus" test announced in *Nollan* has recently been applied and extended by the high court in *Dolan, supra,* 512 U.S. 374. The facts and the holding in *Dolan* demand our particular attention in view of the court's subsequent grant of certiorari in this case and its order directing the Court of Appeal to reexamine its prior judgment in light of the *Dolan* opinion. The facts were fairly straightforward. The plaintiff, Mrs. Dolan, owned a chain of plumbing and electrical supply stores, one of which-located in the City of Tigard, a Portland, Oregon suburb-she sought to expand by constructing a new building on the existing parcel, nearly doubling the retail sales space. The city had conditioned approval of the necessary building permit on dedications of a portion of the parcel for flood control and traffic improvements. Invoking its local development code, the city had required Mrs. Dolan to dedicate a percentage of the parcel adjacent to a floodplain as part of the city's "Greenway" system to prevent additional stress on its storm drainage system. (*Id.* at p. ___ [129 L.Ed.2d at p. 313, 114 S.Ct. at p. 2314].) To relieve traffic congestion in the downtown area, the city had also required the dedication of an additional 15-foot strip of land adjacent to the floodplain as a pedestrian/bicycle pathway. (*Ibid.*)

The city had made generalized findings concerning the relationship between its dedication conditions and the projected impacts of Mrs. Dolan's project. As to the pedestrian pathway, the city's planning commission had found it was " '*reasonable to assume* that customers and employees of the future uses of this site could utilize a pedestrian/bicycle pathway adjacent to this development for their transportation and recreational needs.' " (512 U.S. at p. ___ [129 L.Ed.2d at p. 314, 114 S.Ct. at p. 2314], italics added.) As for the drainage system dedication, the planning commission found that the " 'anticipated increased storm water flow from the subject property to an already strained creek and drainage basin *can only add* to the public need to manage the stream channel and floodplain for drainage purposes.' " (*Id.* at p. ___ [129 L.Ed.2d at p. 313, 114 S.Ct. at p. 2315], italics added.) The Oregon state courts upheld the city's permit conditions, rejecting Mrs. Dolan's argument that the dedication requirements were an uncompensated taking of her property because they were not sufficiently related to her proposed development project.

The United States Supreme Court reversed, establishing in its opinion a two-step procedure for analyzing so-called regulatory takings claims that ***872** builds on the holding in *Nollan, supra,* 483 U.S. 825. First, as it had explained in *Nollan*, a court confronted with a property owner's claim that conditions imposed by a local government for issuance of a development permit must "determine whether the 'essential nexus' exists between the 'legitimate state interest' and the permit condition exacted by the city." (*Dolan, supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 317, 114 S.Ct. at p. 2317], quoting *Nollan, supra,* 483 U.S. at p. 837 [97 L.Ed.2d at p. 689.) If the court finds the presence of such a nexus, it "must then decide the required *degree* of connection between the exactions and the projected impact of the proposed development." (*Id.* at p. ___ [129 L.Ed.2d at p. 317], italics added.)

In elaborating upon this latter requirement-one that had not appeared in the formulation adopted by the court in *Nollan*-the Chief Justice's opinion observed that *state* courts "have been dealing with this

problem a good deal longer than we have" and typically apply one of three standards. (512 U.S. at p. ___ [129 L.Ed.2d at p. 319, 114 S.Ct. at p. 2318].) "In some States," the court noted, "very generalized statements as to the necessary connections between the required dedication and the proposed development seem to suffice." (*Ibid.*) The high court rejected this "deferential" standard as "too lax" to adequately protect a landowner's right to just compensation if her property is taken for a public purpose. (*Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at pp. 319-320, 114 S.Ct. at p. 2319].)

Other state courts have required a very strict correspondence between the exaction and the development, described as the "specifically and uniquely attributable test." Under this standard, the local government must demonstrate that the exaction is precisely proportional to a burden directly and specifically created by the development; otherwise, the regulation becomes, in the words of the Illinois Supreme Court, "a veiled exercise of the power of eminent domain and a confiscation of private property behind the defense of police regulations." (*Pioneer Trust & S. Bank v. Village of Mount Prospect* (1961) 22 Ill.2d 375 [176 N.E.2d 799, 802].) The high court also rejected this test as one requiring a more exacting standard of scrutiny than the federal Constitution demands. (*Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at pp. 319-320, 114 S.Ct. at p. 2319].)

Still other states have adopted what the *Dolan* court characterized as an "intermediate position," requiring the municipality to show a "reasonable relationship" between the required exaction and the impact of the proposed development. Typical of these, according to the court, is *Simpson v. City of North Platte* (1980) 206 Neb. 240 [292 N.W.2d 297], in which the Nebraska Supreme Court observed that the distinction between a proper exercise of the ***873** police power and an improper exercise of eminent domain turned on whether there was "some reasonable relationship or nexus to the use to which the property is being made or is merely being *used as an excuse for taking property simply because at that particular moment the landowner is asking the city for some license or permit.*" (*Id.* at p. 301, italics added.) A city may not, the Nebraska high court held, impose an exaction for some future public use as a condition of permit approval when such future use is not "*occasioned* by the construction sought to be permitted." (*Id.* at p. 302, italics added.)

The *Dolan* court concluded that the "reasonable relationship" test was the closest to the federal constitutional norm; it declined, however, to adopt the "reasonable relationship" terminology because of the potential for confusion with the *less stringent* "rational basis" standard describing "the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment." (512 U.S. at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2319].) Instead, the court adopted the term "rough proportionality," explaining that such a formulation entails "some sort of individualized determination that the required dedication is related *both in nature and extent* to the impact of the proposed development." (*Id.* at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at pp. 2319-2320], italics added, fn. omitted.) Although, as the court explained, no "precise mathematical calculation is required," the city must nevertheless "make some effort to quantify its findings in support of the dedication" beyond mere conclusory statements that it will mitigate or offset some anticipated burden created by the project. (*Id.* at p. ___ [129 L.Ed.2d at p. 323, 114 S.Ct. at p. 2322].)

Applying these principles to the facts before it, the *Dolan* court concluded that the city's required dedications to its "Greenway" system and the pedestrian pathway were not "reasonably related" to Mrs. Dolan's proposed development project. Chief Justice Rehnquist's opinion for the majority conceded that keeping portions of the floodplain adjacent to the petitioner's property free of development could *logically* mitigate pressures on the city's sewage system. However, the court observed, "the city demanded more-it not only wanted petitioner not to build in the floodplain, but it also wanted petitioner's property along [the] Creek for its Greenway system." (512 U.S. at p. ___ [129 L.Ed.2d at p. 321, 114 S.Ct. at p. 2320].) Yet nothing in the city's findings explained "why a *public* greenway, as opposed to a private one, was required in the interest of flood control." (*Ibid.*, italics added.) The court thus found it "difficult to see" how public access to petitioner's floodplain easement was "sufficiently related to the city's [admittedly] legitimate interest in reducing flooding problems along [the] Creek, and the city has not attempted to make any individualized determination to support this part of its request." (*Id.* at p. ___ [***874**129 L.Ed.2d at p. 321, 114 S.Ct. at pp. 2320-2321].) Hence, the court held, "the findings upon which the city relies do not

show the required reasonable relationship between the floodplain easement and the petitioner's proposed new building." (*Id.* at p. ___ [129 L.Ed.2d at p. 322, 114 S.Ct. at p. 2321].)

As for the proposed pedestrian pathway dedication, the court likewise acknowledged that the property owner's development might lead to increased traffic in the downtown streets. Nevertheless, it concluded the city had not demonstrated that the additional traffic generated by the development "reasonably relate[s] to the city's requirement for a dedication of the pedestrian /bicycle pathway easement." (512 U.S. at p. ___ [129 L.Ed.2d at p. 323, 114 S.Ct. at p. 2321.) The city had merely found that the creation of the pathway " '*could* offset some of the traffic demand ... and lessen the increase in traffic congestion.' " (*Id.* at pp. ___-___ [129 L.Ed.2d at p. 323, 114 S.Ct. at pp. 2321-2322], italics added, fn. omitted.) The fact that the pathway "could" have had such an effect, however, was insufficiently precise to demonstrate the constitutionally required relationship between the development and the compelled property dedication. "[T]he city must make some effort to quantify its findings in support of the dedication for the pedestrian/bicycle pathway," the court wrote, "beyond the conclusory statement that it could offset some of the traffic demand generated." (*Id.* at p. ___ [129 L.Ed.2d at p. 323, 114 S.Ct. at p. 2322].) Concluding that "the findings upon which the city relies do not show the required reasonable relationship," the court ordered the case remanded for further proceedings. (*Id.* at pp. ___, ___ [129 L.Ed.2d at p. 322, 114 S.Ct. at pp. 2321, 2322].)

IV. Do Nollan and Dolan Apply to Nonpossessory Exactions?

Both *Nollan* and *Dolan* involved regulatory schemes under which the local government had required the *possessory dedication* of real property by the owner as a condition for issuing the necessary development permit. Moreover, language employed by Justice Scalia in his opinion for the majority in *Nollan* has been read by some students of the high court's contemporary takings jurisprudence as *limiting* the operation of the "essential nexus" requirement to cases of possessory exactions. After observing that the high court's modern takings cases had upheld land-use restrictions that "substantially advance" a legitimate state purpose (see, e.g., *Agins v. Tiburon* (1980) 447 U.S. 255 [65 L.Ed.2d 106, 100 S.Ct. 2138]), Justice Scalia wrote that "We are inclined to be particularly careful about the adjective [i.e., '*substantial*'] where the *actual conveyance* of property is made a condition for the lifting of a land use restriction, since in that context there is heightened risk ***875** that the purpose is avoidance of the compensation requirement, rather than the stated police-power objective." (483 U.S. at p. 841 [97 L.Ed.2d at p. 692], italics added.)

This case, of course, does not involve a demand by Culver City that the property owner convey a portion of the parcel for public use as a condition of granting his rezoning request and issuing a permit to build the desired condominium project. Rather, the city insists on a *different* kind of exaction as a condition for authorizing development: the payment of $280,000. Does this distinction in the nature of the exaction make the diptych of *Nollan* and *Dolan* inapplicable to this case? Some courts and commentators have concluded that it does.

In *Blue Jeans Equities West v. City and County of San Francisco* (1992) 3 Cal.App.4th 164 [4 Cal.Rptr.2d 114], for example, our Court of Appeal concluded that "any heightened scrutiny test contained in *Nollan* is limited to possessory rather than regulatory takings cases." (*Id.* at p. 171.) The Court of Appeal relied in part on the opinion by the United States Court of Appeals for the Ninth Circuit in *Commercial Builders v. Sacramento* (9th Cir. 1991) 941 F.2d 872. There, a divided court had rejected a contention by commercial developers challenging a city ordinance conditioning nonresidential building permits on payment of a fee to offset municipal burdens associated with the influx of low-income workers relocating to fill jobs created by such projects, that *Nollan* imposed a heightened level of scrutiny on such fee exactions. Relying on other federal appellate court opinions that had "considered the constitutionality of ordinances that placed burdens on land use after *Nollan*," the majority concluded that "[n]one have interpreted that case as changing the level of scrutiny to be applied to regulations that do not constitute a physical encroachment on land." (*Id.* at p. 874, citing *St. Bartholomew's Church v. City of New York* (2d Cir. 1990) 914 F.2d 348, 357, fn. 6, cert. den. *sub nom. Committee to Oppose Sale of St. Bartholomew's Church v. Rector* (1991) 499 U.S. 905 [113 L.Ed.2d 214, 111 S.Ct. 1103]; *Adolph v. Federal Emergency Management Agency* (5th Cir. 1988) 854 F.2d 732, 737; *Naegele Outdoor Advertising, Inc. v. City of Durham*

(4th Cir. 1988) 844 F.2d 172, 178; see also *Leroy Land Dev. v. Tahoe Regional Planning Agency* (9th Cir. 1991) 939 F.2d 696.) "As a threshold matter," the Ninth Circuit concluded, "we are not persuaded that *Nollan* materially changes the level of scrutiny we must apply" to the Sacramento ordinance at issue. (941 F.2d at p. 874; see also Kushner, *Property and Mysticism: The Legality of Exactions as a Condition for Public Development Approval in the Time of the Rehnquist Court*, *supra*, 8 J. Land Use & Envtl. L. 53, 166.)

There is no question that the takings clause is specially protective of property against *physical occupation* or invasion-a proposition that the ***876** court's opinion in *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419 [73 L.Ed.2d 868, 102 S.Ct. 3164] makes clear. It is also true, as the city points out, that government generally has greater leeway with respect to noninvasive forms of land-use regulation, where the courts have for the most part given greater deference to its power to impose broadly applicable fees, whether in the form of taxes, assessments, user or development fees. Both *Blue Jean Equities West v. City and County of San Francisco*, *supra*, 3 Cal.App.4th 164, and *Commercial Builders v. Sacramento*, *supra*, 941 F.2d 872, dealt with such legislatively formulated development assessments imposed on a broad class of property owners. Fees of this nature may indeed be subject to a lesser standard of judicial scrutiny than that formulated by the court in *Nollan* and *Dolan* because the heightened risk of the "extortionate" use of the police power to exact unconstitutional conditions is not present. Nonetheless, we reject the proposition that *Nollan* and *Dolan* are entirely without application to monetary exactions. When such exactions are imposed-as in this case-neither generally nor ministerially, but on an individual and discretionary basis, we conclude that the heightened standard of judicial scrutiny of *Nollan* and *Dolan* is triggered.

One of the central promises of the takings clause is that truly public burdens will be publicly borne. Where the regulatory land-use power of local government is deployed against individual property owners through the use of conditional permit exactions, the *Nollan* test helps to secure that promise by assuring that the monopoly power over development permits is not illegitimately exploited by imposing conditions that lack any logical affinity to the public impact of a particular land use. The essential nexus test is, in short, a "means-ends" equation, intended to limit the government's bargaining mobility in imposing permit conditions on individual property owners-whether they consist of possessory dedications or the exaction of cash payments-that, because they appear to lack any evident connection to the public impact of the proposed land use, *may* conceal an illegitimate demand-may, in other words, amount to " 'out-and-out ... extortion.' " (*Nollan*, *supra*, 483 U.S. at p. 837 [97 L.Ed.2d at p. 689].)

Under this view of the constitutional role of the consolidated "essential nexus" and "rough proportionality" tests, it matters little whether the local land use permit authority demands the actual *conveyance* of property or the *payment* of a monetary exaction. In a context in which the contraints imposed by legislative and political processes are absent or substantially reduced, the risk of too elastic or diluted a takings standard-the vice of distributive injustice in the allocation of civic costs-is heightened in either case. Support for this view of the scope of the test can be drawn from a close reading of the text of Justice Scalia's opinion in *Nollan* and from the Chief Justice's opinion in *Dolan*. ***877**

A

The *Nollan* opinion begins its substantive analysis of the takings claim with the proposition that "[h]ad California simply required the Nollans to make an easement across their beachfront available to the public on a permanent basis in order to increase public access to the beach ... we have no doubt there would have been a taking." (483 U.S. at p. 831 [97 L.Ed.2d at p. 685].) Assuming the state's unilateral and uncompensated requisition of a lateral easement from the Nollans would have offended the takings clause, the court then asked "whether requiring [an easement] to be conveyed as a condition for issuing a land-use permit alters the outcome." (*Id.* at p. 834 [97 L.Ed.2d at p. 687].) The answer to that question, the court said, was "yes." The imposition of a permit condition that "serves the same legitimate police-power purposes as a refusal to issue the permit," the high court reasoned, "should not be found to be a taking *if the refusal to issue the permit would not constitute a taking*." (*Id.* at p. 836 [97 L.Ed.2d at p. 689], italics added.) "Thus, if the Commission attached to the permit some condition that would have protected the public's ability to see the beach notwithstanding construction of the new house

... so long as the Commission could have exercised its police power ... to forbid construction of the house altogether, imposition of the condition would also be constitutional." (*Ibid.*)

The heart of the takings analysis, Justice Scalia's opinion continued, lay in the presence (or absence) of a *link* between the commission's power to deny the Nollans a development permit altogether, and its power to impose a condition on its issuance that furthers the *same end* as an outright prohibition on development. "If a prohibition designed to accomplish that purpose would be a legitimate exercise of the police power rather than a taking, it would be strange to conclude that providing the owner an alternative to that prohibition *which accomplishes the same purpose is not*." (483 U.S. at pp. 836-837 [97 L.Ed.2d at p. 689], italics added.)

The vice of the commission's permit condition in *Nollan*, however, was the *absence* of any logical connection between the condition and the purported justification for an outright ban on development. "The evident constitutional propriety"-between denying a permit and conditioning its issuance on achieving the same purpose through alternative means-"disappears," the court wrote, "if the condition substituted for the prohibition utterly *fails to further the end advanced as the justification for the prohibition*. When that essential nexus is eliminated, the situation becomes the same as if California law forbade shouting fire in a crowed theater, but granted dispensations to those willing to contribute $100 to the state treasury... [T]he lack of nexus between the condition and the original ***878** purpose of the building restriction converts that purpose to something other than what it was. The purpose then becomes, quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation." (483 U.S. at p. 837 [97 L.Ed.2d at p. 689], italics added.)

"In short," Justice Scalia concluded, "unless the permit condition *serves the same governmental purpose* as the development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.' " (483 U.S. at p. 837 [97 L.Ed.2d at p. 689], quoting *J.E.D. Associates v. Town of Atkinson* (1981) 121 N.H. 581 [432 A.2d 12, 14-15], italics added.) [FN8]

FN8 Justice Scalia, the author of the majority opinion in *Nollan, supra*, 483 U.S. 825, elaborated on his view of the essence of the takings clause in his dissent in *Pennell v. San Jose* (1988) 485 U.S. 1, 15 [99 L.Ed.2d 1, 17, 108 S.Ct. 849], a case challenging a rent control ordinance on the ground that one of its criteria for increases-whether a proposed hike would work a hardship to a tenant-constituted an uncompensated taking. Although a majority held the takings claim premature, Justice Scalia would have held "that the ... provision ... effects a taking of private property without just compensation ...." (*Ibid.*) Invoking the language of *Armstrong v. United States* (1960) 364 U.S. 40, 49 [4 L.Ed.2d 1554, 1561, 80 S.Ct. 1563], his dissent reasoned that "[t]raditional land-use regulation ... does not violate" the principle embodied in *Armstrong* "because there is a cause-and-effect relationship between the property use restricted by the regulation and the social evil that the regulation seeks to remedy." (485 U.S. at p. 20 [99 L.Ed.2d at p. 19] (dis. opn. of Scalia, J.).) The essence of the takings clause, the dissent reasoned, "is simply the unfairness of making one citizen pay, in some fashion other than taxes, to remedy a social problem that is none of his creation." (*Id.* at p. 23 [99 L.Ed.2d at p. 22]; cf. *Nollan, supra*, 483 U.S. at p. 825, fn. 4 [97 L.Ed.2d at p. 688].)

In briefing before this court, plaintiff and several supporting amici curiae insist that because the club was a *privately* operated facility, accessible only by dues-paying members, a zoning change withdrawing the parcel from such private recreational use could not have a cognizable *public* impact as a matter of law. The trial court, in its memorandum opinion granting judgment for plaintiff, adopted this argument, reasoning that "[plaintiff's] club ... was at all times *private* property; the city never owned any interest in it nor was any part of it ever dedicated to *public* use.... [Plaintiff's] actions cannot be said to deprive the *City* of tennis courts, because neither did [plaintiff] have an affirmative duty to provide tennis courts to the City or its residents nor would tennis courts necessarily be available to the City but for [plaintiff's] project.... [¶] The City could have condemned a portion of [plaintiff's] property for use as City tennis courts, but the City would then of course have had to pay for the land. Here, instead of taking land for which it would have

had to pay, the City proposes to take not land but money. This is equally impermissible."

The assumption that, because property is designated for private recreational use, it lacks public value and that its subsequent withdrawal has no ***879** public impact is flawed as a matter of logic. Although privately owned and operated, plaintiff's health club was a business establishment, accessible to the public on the payment of a membership fee. The opportunity of Culver City residents to use such private recreational facilities created a *public* benefit by enlarging the availability of such facilities. Without such a facility, residents would have to travel farther, wait longer, and put up with other inconveniences and restricted choices in their recreational pursuits. Thus, the fact that a recreational facility is privately rather than publicly owned does not erase its value to the public.

This principle-that the discontinuation of a private land use may have distinctly *public* consequences-is well accepted in land-use law. Indeed, in *Nollan* itself Justice Scalia as much as conceded that the loss of private open space resulting from residential beach development could lead to an adverse public impact-a diminution of coastal views-justifying a requirement that the Nollans "provide a viewing spot on their property for passersby with whose sighting of the ocean their new house would interfere." (483 U.S at p. 836 [97 L.Ed.2d at p. 689].) Although, as we explain below, the fact that a recreational facility is privately rather than publicly owned may affect the magnitude of the value the city may constitutionally place on its loss, private status alone does not per se erase its intrinsic public value for land-use regulatory purposes. In short, it is well accepted in both the case and statutory law that the discontinuance of a private land use can have a significant impact justifying a monetary exaction to alleviate it. We perceive no reason why the same cannot be said of the loss of land devoted to private recreational use through its withdrawal from such a use as a result of being "up zoned" to accommodate incompatible uses.

There thus exists a potential basis *in logic* for a connection between a social need generated by plaintiff's condominium project and the $280,000 mitigation fee imposed by the city.

B

The opinion by the Chief Justice in *Dolan, supra,* 512 U.S. 374, both incorporates the essential nexus test of *Nollan*, and takes the next analytical step-determining the extent to which the takings clause imposes not only a logical connection between a permit condition and the public impact of a given land use, but dictates the nature of the required "fit" between means and ends. While the court in *Nollan* was concerned with the *nature* of the relationship between a proposed development and a governmental exaction, its focus in *Dolan* is on the *degree* of the required connection. Instead of asking "what is the nature of the relationship between a given permit ***880** condition and the public costs of a proposed land use" (a question answered in *Nollan* by the "essential nexus" formulation), the court asked in *Dolan* "[W]hat is the required *degree of connection* between the exactions imposed by the city and the projected impact[] of the proposed development?" (*Id.* at p. ___ [129 L.Ed.2d at p. 311, 114 S.Ct. at p. 2312], italics added.)

The answer to that question, as we have seen, is twofold. The condition imposed by the challenged regulation must not only be roughly proportional, the *Dolan* court held, both in "nature and extent to the impact of the proposed development" (512 U.S. at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2320]), but the required proportionality must be demonstrated by "some sort of individualized determination." (*Id.* at p. ___ [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2319].) The court framed the first leg of its rough proportionality test as an inquiry into "whether the degree of the exactions demanded by the city's permit conditions bear the required relationship to the projected impact of petitioner's proposed development." (*Id.* at p. ___ [129 L.Ed.2d at p. 318, 114 S.Ct. at p. 2318].) The antecedent question underlying *that* inquiry is, of course, the exact nature of the "required relationship" imposed by the takings clause. As we have seen, the court answered its own question by applying an "intermediate" level of constitutional scrutiny-"rough proportionality"-to the relationship between the city's permit conditions and the public costs associated with Mrs. Dolan's proposed development.

We need not repeat here the extended account of the *Dolan* court's reasoning set out above (*ante*, at pp. 869-872), except to note that, as we read the high court's opinion, the chief analytical advance of *Dolan* over the formulation by the court in *Nollan* appears to lie in the requirement that the local permit authority "make some sort of *individualized* determination that

the required dedication is related both in nature and extent to the impact of the proposed development." (512 U.S. at pp. ___-___ [129 L.Ed.2d at p. 320, 114 S.Ct. at pp. 2319-2320], italics added, fn. omitted.) We view the requirement that the local government demonstrate a *factually* sustainable proportionality between the effects of a proposed land use and a given exaction as one which furthers the assurances implicit in the *Nollan* test that the condition at issue is more than theoretically or even plausibly related to legitimate regulatory ends.

Nollan and *Dolan* are thus concerned with implementing one of the fundamental principles of modern takings jurisprudence-"to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." (*Armstrong* ****881*** v. *United States*, *supra*, 364 U.S at p. 49 [4 L.Ed.2d at p. 1561].) Of course, as we have already observed, it is not at all clear that the rationale (and the heightened standard of scrutiny) of *Nollan* and *Dolan* applies to cases in which the exaction takes the form of a *generally* applicable development fee or assessment-cases in which the courts have deferred to legislative and political processes to formulate "public program[s] adjusting the benefits and burdens of economic life to promote the common good." (*Penn Central Transp. Co.* v. *New York City* (1978) 438 U.S. 104, 124 [57 L.Ed.2d 631, 648, 98 S.Ct. 2646].) But when a local government imposes special, discretionary permit conditions on development by individual property owners -as in the case of the recreational fee at issue in this case-*Nollan* and *Dolan* require that such conditions, whether they consist of possessory dedications or monetary exactions, be scrutinized under the heightened standard.

V. Applying the Heightened Standard in This Case

(4a) We come, then, to the application of the combined *Nollan-Dolan* "essential nexus" and "rough proportionality" test to the facts in the record before us. Like the high court in *Dolan*, *supra*, 512 U.S. 374, we will conclude that, although the city's findings with respect to the relationship between the monetary exaction and the withdrawal of a parcel of land within Culver City restrictively zoned for private recreational use satisfies the essential nexus standard, the present record is inadequate to support the requirement that plaintiff pay a recreational fee of $280,000 for the desired permit. We conclude instead that although the city may be able to justify a monetary exaction in *some* amount, what that figure is we are quite unable to say on this record.

A

The land-use limitation on which the city relies to justify its $280,000 fee exaction consists of a restriction of plaintiff's use of his property to commercial recreational activities, a restriction that could not be changed without amending both Culver City's general plan and the specific plan applicable to the parcel. (5a) It is well settled that such a limitation on use is constitutional unless the restriction "does not substantially advance legitimate state interests ... or denies an owner economically viable use of his land." (*Agins v. Tiburon*, *supra*, 447 U.S. at p. 260 [65 L.Ed.2d at p. 112].)

(6a) The general purpose of zoning and planning is to regulate the use of land to promote the public welfare, a power the courts have construed very ****882*** broadly. Indeed, one of the traditional uses of the police power lies in providing citizens adequate recreational opportunities. (See, e.g., *Associated Home Builders*, *supra*, 4 Cal.3d 633, 638 ["The elimination of open space in California is a melancholy aspect of the unprecedented population increase which has characterized our state in the last few decades.... [G]overnmental entities have the responsibility to provide park and recreation land to accommodate this human expansion ...."].) (4b) We thus have no doubt that the use of zoning to facilitate the availability of private recreational facilities to the residents of Culver City is within the scope of the city's police power.

(5b) Nor is it an unreasonable use of the police power for the city to prescribe not only broad categories of land use, such as "commercial" and "residential," but to specify, through a general plan, specific plan, and zoning regulations, the types of businesses that can be carried on at a given site, so long, of course, as the restrictions meet the two-part standard embodied in *Agins v. City of Tiburon*, *supra*, 447 U.S. 255. (4c) The record before us indicates that private recreational facilities were in scarce supply in the city and merited preservation and promotion. As the 1988 city staff analysis of plaintiff's proposed project noted, "Culver City as a fully-developed urban city has very little open space in which to develop parks and related recreational facilities. By national standards ... the City is deficient in park space, tennis courts, swim-

ming facilities, gymnasiums and the recreational activity centers needed to maintain and enhance the 'quality of life' in our community."

We thus have no doubt as to the city's legitimate authority to impose development impact fees for park and recreational purposes. (See *Associated Home Builders, supra,* 4 Cal.3d 633; Gov. Code, §§ 66001, 66477.) Nor is there any genuine dispute that the $280,000 fee, which the city has committed to the purchase of additional recreational facilities, will substantially advance its legitimate interest in correcting a demonstrated deficiency in municipal recreational resources. Unlike *Nollan*, where the high court found no logical connection between the commission's demand for a lateral easement across the owner's property and the purported governmental purpose of enhancing visual access, the "essential nexus" in this case is plain.

B

We must next decide whether there is a "rough proportionality" between the public impact of the land use change and the recreational fee. The *Dolan* court, in an effort to balance the government's legitimate need to impose reasonable exactions against the property owner's right to be free of undue ***883** burdens, formulated an intermediate standard of review and a corresponding evidentiary burden on local government. "[G]eneralized statements as to the necessary connection between the required dedication and the proposed development" are constitutionally insufficient, according to the court. (512 U.S. at p. ___ [129 L.Ed.2d at p. 319, 114 S.Ct. at p. 2318].) As noted, however, the *Dolan* majority also rejected the claim that the government "demonstrate that its exaction is directly proportional to the specifically created need" as being more than the Fifth Amendment demands. (*Id.* at p. ___ [129 L.Ed.2d at p. 319, 114 S.Ct. at p. 2319].)

In both *Nollan* and *Dolan*, the court conceded that the development project at issue would have negative effects that the city could mitigate using its police power. It found insufficiently substantial, however, the connection between those effects and the required public dedications. Similarly, the record before us in this case is devoid of any individualized findings to support the required "fit" between the monetary exaction and the loss of a parcel zoned for commercial recreational use. The city argues that its $280,000 recreation fee is warranted as partial compensation for the loss of some $800,000 in recreational improvements that were formerly located on plaintiff's property. But in this case it is error to measure the lost recreational benefits by the lost value of plaintiff's health club. The loss which the city seeks to mitigate by levying the contested recreational fee is not the loss of any particular recreational facility, but the loss of property reserved for private recreational use.

The city appears to be arguing, implicitly, that if it had refused to change its general and specific plan designations, and insisted on a private recreational use of the land, a new recreational facility would have been resurrected on the site, one containing four tennis court or their equivalent. From this premise, the city asserts that the change in land use granted plaintiff has resulted in the "loss" of four tennis courts that would have been built had that land-use change not been granted. Even if such a supposition could be proven, however, it would still not justify the $280,000 fee, because the cost of these new private tennis courts would have been paid for by the fees of the private club members and the courts would have been private, not open to all members of the public free of charge.

Thus, under the city's formula, the public would receive, ex gratia, $280,000 worth of recreational facilities the cost of which it would otherwise have to finance through membership fees. Plaintiff is being asked to pay for something that should be paid for either by the public as a whole, or by a private entrepreneur in business for a profit. The city may not constitutionally measure the magnitude of its loss, or of the recreational exaction, by the value of facilities it had no right to appropriate without payment. ***884**

This is not to say, however, that *some* type of recreational fee imposed by the city as a condition of the zoning and related changes cannot be justified. The amount of such a fee, however, must be tied more closely to the actual impact of the land-use change the city granted plaintiff. Although we are unable to discern, on this record, the precise value or the economic cost of these impacts, several possibilities suggest themselves. One such possibility is likely to be the additional administrative expenses incurred in redesignating other property within Culver City for recreational use. The city's director of human services, who opposed the abandonment of a recreational use restriction on plaintiff's property, stated that to "permit

this type of recreational development elsewhere would ... involve arduous and costly rezoning and public hearings." It would be reasonable to require plaintiff to contribute toward defraying these anticipated rezoning costs, so that the city does not have to bear them itself or pass them along to future private developers seeking to construct recreational facilities.

More generally, the city's approval of plaintiff's condominium project may have given rise to public costs in the form of a diminished ability to attract private recreational development. If the city can show that it would have to incur greater costs to attract a developer of suitable private recreational facilities because plaintiff's parcel is no longer reserved for such a recreational use, it may consider these costs to be a part of the impact of plaintiff's project, and would be constitutionally permitted to impose such an exaction. Such a fee would enable the city to induce private health club development by offering monetary incentives roughly proportional to the land use incentive it relinquished when it removed the recreational use restriction from plaintiff's property.

Of course, the city could not constitutionally require plaintiff to dedicate the same amount of land for *public* recreational facilities. It could, however, require plaintiff to transfer, so to speak, the restricted land-use designation at the Overland Avenue site to a comparable parcel plaintiff owns within the city, thus returning the city to the status quo as it existed prior to approval of the condominium project, that is, with a similar parcel of vacant land reserved for recreational use as an inducement to the development of private recreational facilities. If the city decides, however, that such a restricted land-use transfer is impracticable, it may surely levy an in-lieu exaction to accomplish the same objective. Such a fee would serve the same purpose as do all development fees: providing the city with a means of escaping the narrow choice between denying plaintiff his project permit altogether or subordinating legitimate public interests to plaintiff's development plans.

We cannot say, on this incomplete record, what, if any, recreational fee the evidence might justify. Although in calculating its net cost as a result of ***885** upzoning the Overland Avenue parcel the city must take into account any relative benefit that plaintiff's project would contribute to the public interest for which the fee is imposed, the record suggests that some exaction may be warranted. It is thus appropriate to return the case to the city to reconsider its valuation of the fee in light of the principles we have articulated. Remand to the city was apparently what occurred in *Dolan* itself after the case was returned to the Oregon Supreme Court. (See *Dolan v. City of Tigard* (1994) 319 Or. 567 [877 P.2d 1201] [the case is "remanded to the City of Tigard for further proceedings."].) Following remand, the city must determine whether and to what extent approval of plaintiff's requested land-use changes justify the imposition of a recreation fee as a means of compensating it for the additional costs of attracting the development of comparable private recreational facilities for its residents. The determination of such a fee will, of course, require the city to make specific findings supported by substantial evidence-that is, the city "must make some effort to quantify its findings" supporting any fee, beyond "conclusory statements," although "[n]o precise mathematical calculation is required" either by the takings clause or the Act. (*Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 323, 114 S.Ct. at p. 2322].)

VI. The Art in Public Places Fee

(7a) Under the city's art in public places ordinance, plaintiff could not receive a certificate of occupancy for any of the 30 townhouses in the project until he either paid $32,200 to the city art fund (1 percent of the total building valuation) or contributed an approved work of art of an equivalent value. Under the latter option, the art may either be placed on site, in which case it remains the property of the applicant, or it may be donated to the city for placement elsewhere. Although petitioner initially opted to pay the fee, his successor in interest subsequently placed art of his own choosing on the site and received the 30 certificates of occupancy during the pendency of this action.

Plaintiff contends that the required dedication of art or the cash equivalent thereof constitutes a taking under the *Nollan-Dolan* standards. This follows, he asserts, from the fact that the city made no individualized determination that the art mitigates a need generated by the project.

The city defends the art fee on several grounds. As a threshold matter, it contends plaintiff failed to preserve his right to litigate the claim because his successor satisfied the requirements of the ordinance and accepted the ***886** benefit of receiving all 30 certificates of occupancy during the pendency of these

proceedings. The record shows, however, that plaintiff filed a written protest to the imposition of the fee in accordance with Government Code section 66020, and subsequently entered into an agreement with the city in which he preserved his right to maintain this "lawsuit" challenging both the recreation fee and the art fee. Thus, the claim has not been waived.

Nevertheless, we agree with the city that the art in public places fee is not a development exaction of the kind subject to the *Nollan-Dolan* takings analysis. As both the trial court and the Court of Appeal concluded, the requirement to provide either art or a cash equivalent thereof is more akin to traditional land-use regulations imposing minimal building setbacks, parking and lighting conditions, landscaping requirements, and other *design* conditions such as color schemes, building materials and architectural amenities. Such aesthetic conditions have long been held to be valid exercises of the city's traditional police power, and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property. (See, e.g., *Metromedia Inc*. v. *San Diego* (1980) 453 U.S. 490, 508, fn. 13 [69 L.Ed.2d 800, 815, 101 S.Ct. 2882] [approving prohibition against outdoor advertising]; *Penn Central Transp. Co*. v. *New York City*, *supra*, 438 U.S. 104 [upholding municipal power to preserve landmark structures]; *Agins v. Tiburon*, *supra*, 447 U.S. 255 [upholding condition to preserve scenic views].) The requirement of providing art in an area of the project reasonably accessible to the public is, like other design and landscaping requirements, a kind of aesthetic control well within the authority of the city to impose.

Conclusion

A generation ago, an observer of the high court's takings jurisprudence called the question of when land-use regulation under the police power becomes compensable "the most haunting jurisprudential problem in the field of contemporary land-use law." (Harr, Land-Use Planning (3d ed. 1977) 766, quoted in *The Supreme Court-Leading Cases*, *supra*, 101 Harv. L. Rev. 119, 241.) After more than half a century during which the content of the takings clause lay comparatively unexamined-roughly between *Pennsylvania Coal v. Mahon* (1922) 260 U.S. 393 [67 L.Ed. 322, 43 S.Ct. 158, 28 A.L.R. 1321], and *Penn Central Transp. Co*. v. *New York City*, *supra*, 438 U.S. 104 -the high court decided no less than eight such cases in a little more than a decade. [FN9] As several commentators have observed, the task of making this blitz of opinions doctrinally coherent is daunting; even the ***887** short-term direction of the court's recent takings jurisprudence remains uncertain. Perhaps *Nollan* and *Dolan* mark, as some scholars have suggested, "a major shift of the power of government in land use cases." (Epstein, *Takings: Descent and Resurrection*, *supra*, 1987 Sup. Ct. Rev. 1, 43); perhaps, as others have argued, they represent "a step backwards" from the heightened protection of property rights. (Note, *Taking a Step Back: A Reconsideration of the Takings Test of Nollan v. California Coastal Commission*, *supra*, 102 Harv. L. Rev. 448, 468.) Our own reading lies somewhere between these two margins.

FN9 *Penn Central Transp. Co*. v. *New York City*, *supra*, 438 U.S. 104; *Agins v. Tiburon*, *supra*, 447 U.S. 255; *Loretto v. Teleprompter Manhattan CATV Corp.*, *supra*, 458 U.S. 419; *Keystone Bituminous Coal Assn.* v. *DeBenedictis* (1987) 480 U.S. 470, 485 [94 L.Ed.2d 472, 488, 107 S.Ct. 1232]; *First Lutheran Church v. Los Angeles County* (1987) 482 U.S. 304 [96 L.Ed.2d 250, 107 S.Ct. 2378]; *Nollan*, *supra*, 483 U.S. 825; *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015-1016 [120 L.Ed.2d 798, 813-814, 112 S.Ct. 2886, 2893-2894]; *Dolan*, *supra*, 512 U.S. 374.

The judgment of the Court of Appeal is reversed; the cause is remanded to that court with directions to order the case returned to the City of Culver City.

Lucas, C. J., and George, J., concurred.

MOSK, J.,

Concurring.- **(4d), (5c), (6b), (7b)** I concur in the plurality's judgment, and agree with much of its analysis. I fully agree with part V of the plurality opinion-that Culver City (the City) may be able to charge a fee for the loss of property designated for recreational use, but that it failed to employ the proper method of calculating such a fee. I agree, too, with part VI of the plurality opinion-that the art fee is constitutional. I write separately to address the larger question of the appropriate constitutional standard for reviewing monetary exactions on development. As I will elaborate below, the heightened standard of scrutiny

found in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 [97 L.Ed.2d 677, 107 S.Ct. 3141] (*Nollan*) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 [129 L.Ed.2d 304, 114 S.Ct. 2309] (*Dolan*) is generally *not* applicable to development fees; the present case is thus more the exception than the rule. This view is consistent with the plurality's analysis, and our difference in this regard is more one of emphasis than of substance.

As explained below, nothing in the United States Supreme Court's recent takings jurisprudence can be understood to signify a change in the rule-founded on the fundamental principles of the separation of powers and judicial restraint-that state and local governments possess considerable authority to impose different and unequal financial burdens on property owners, subject only to the rational basis requirements of the Fourteenth Amendment's equal protection clause. Only when the government engages ***888** in the physical taking or invasion of real and personal property, or singles out individual property owners by conditioning development permits on the payment of ad hoc fees not borne by a larger class of developers or property owners, does the heightened scrutiny of *Nollan* and *Dolan* apply.

I.

A. *Physical Takings, Regulatory Takings, and the Nollan/Dolan Standard.*

Nollan and *Dolan* must be viewed within the general framework of takings jurisprudence. One of the cornerstones of such jurisprudence is the special protection given to the *physical* invasion or occupation of real property under the Fifth Amendment. A government regulation that affects the use of land, such as a zoning ordinance, is generally not deemed to be a taking unless the regulation "does not substantially advance legitimate state interests [citation] or denies an owner economically viable use of his land [citation]." (*Agins v. Tiburon* (1980) 447 U.S. 255, 260 [65 L.Ed.2d 106, 112, 100 S.Ct. 2138].) In these cases, the burden rests with those challenging the regulation to demonstrate its unconstitutionality. (See *Dolan*, *supra*, 512 U.S. at p. , fn. 8 [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2320].) However, "regulations that compel the property owner to suffer a physical 'invasion,' " will generally be determined to be takings "*no matter how minute the intrusion, and no matter how weighty the public purpose behind it* ...." (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015 [120 L.Ed.2d 798, 812, 112 S.Ct. 2886, 2892], italics added.)

The centrality of physical invasion in takings jurisprudence is nowhere more clearly stated than in *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419 [73 L.Ed.2d 868, 102 S.Ct. 3164] (*Loretto*). There the court invalidated a New York law requiring owners of apartment buildings to permit cable television companies to install cable wires and boxes on their premises. The court stated that it had "long considered a physical intrusion by government to be a property restriction of an unusually serious character for purposes of the Takings Clause. Our cases further establish that when the physical intrusion reaches the extreme form of a permanent physical occupation, a taking has occurred. In such case, 'the character of the government action' not only is an important factor in resolving whether the action works a taking but is also determinative." (*Id.* at p. 426 [73 L.Ed.2d at p. 876].) As the court emphasized, "[a] landowner's right to exclude [is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.' " (*Id.* at p. 433 [73 L.Ed.2d at p. 881].) In a permanent physical occupation of property "the government does not simply take a single ***889** ' strand' from the 'bundle' of property rights: it chops through the bundle, taking a slice of every strand." (*Id.* at p. 435 [73 L.Ed.2d at p. 882].) The court therefore found the cable statute to be unconstitutional because of its requirement that landlords consent to the permanent occupation of their property, although the economic impact of this statute was far less onerous than a number of other regulations upheld by the court that restricted the use of property but did not authorize its physical invasion. (See, e.g., *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104 [57 L.Ed.2d 631, 98 S.Ct. 2646] [denial of permit to build a high rise for the sake of historical preservation]; *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470 [94 L.Ed.2d 472, 107 S.Ct. 1232] [regulation requiring coal mines to keep 50 percent of coal in the ground in order to prevent subsidence not a taking].)

Nollan must be considered as a further development of the principles enunciated in *Loretto*. In *Nollan*, the court considered a government regulation that permitted the physical invasion of property as a condition of granting a development permit. The Nollans sought to replace a dilapidated bungalow on property

bordering the ocean, and were required to obtain a coastal development permit. As a condition of the permit, the Nollans would have been compelled to provide lateral public access along a portion of their property bounded by the ocean and their seawall, to enable members of the public to walk between two public beaches bordering the Nollans' property.

The court began its analysis by reaffirming the holding in *Loretto* that "[w]here governmental action results in '[a] permanent physical occupation' of the property, by the government itself or by others [citation], 'our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner ....' " (*Nollan, supra*, 483 U.S. at pp. 831-832 [97 L.Ed.2d at p. 686], quoting *Loretto, supra*, 458 U.S. at pp. 434-435 [73 L.Ed.2d at p. 882].) The court continued: "We think a 'permanent physical occupation' has occurred, for purposes of that rule, where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed, even though no particular individual is permitted to station himself permanently upon the premises." (*Nollan, supra*, 483 U.S. at p. 832 [97 L.Ed.2d at p. 686].)

Given that view, it might be expected that the court would hold that the easement in *Nollan*, like the cable statute in *Loretto*, was a per se taking, for which the government must pay no matter what the justification. But the court recognized that the regulation in the case before it, unlike the statute in *Loretto*, was imposed as a condition of approving a development application, ***890** and that a public agency could, if the proposed development contravened a valid land use regulation, deny that application altogether. "If a prohibition [to development] designed to accomplish [a lawful state] purpose would be a legitimate exercise of the police power rather than a taking, it would be strange to conclude that providing the owner an alternative to that prohibition which accomplishes the same purpose is not." (*Nollan, supra*, 483 U.S. at pp. 836-837 [97 L.Ed.2d at p. 689].)

Thus, the otherwise unconstitutional imposition of a public easement on private property derives its constitutional legitimacy from the fact that a prohibition on development is constitutionally justified. "The evident constitutional propriety disappears, however, if the condition substituted for the prohibition utterly fails to further the end advanced as the justification of the prohibition." (*Nollan, supra*, 483 U.S. at p. 837 [97 L.Ed.2d at p. 689].) Without this "essential nexus," between the permit condition and the development ban, "the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.' " (*Ibid.*) The *Nollan* court found no such nexus in the case before it. The purported justification for limiting development-the interference of the newly constructed house with a public view of the ocean-was not served by a lateral easement allowing individuals to walk along the ocean. (*Id.* at pp. 838-839 [97 L.Ed.2d at p. 690].)

That the *Nollan* case turned on the fact that the regulation was a physical taking is further accentuated by Justice Scalia at the conclusion of the majority opinion: "We view the Fifth Amendment's Property Clause to be more than a pleading requirement .... [O]ur cases describe the condition for abridgment of property rights through the police power as a '*substantial* advanc [ing]' of a legitimate state interest. We are inclined to be particularly careful about the adjective *where the actual conveyance of property* is made a condition to the lifting of a land-use restriction, since in that context there is a heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated police-power objective." (*Nollan, supra*, 483 U.S. at p. 841 [97 L.Ed.2d at p. 692], second italics added.) Thus in *Nollan*, the rule that the government's physical occupation of private property is a per se taking is transformed, in the context of a development application, into a rule of heightened scrutiny to ensure that a required development dedication is not a mere pretext to obtain or otherwise physically invade property without just compensation.

In *Dolan*, the court considered the issue of how close the nexus between the development restriction and the dedication must be. In that case, Dolan sought the expansion of her hardware store. The court conceded that the city had legitimately found that the expansion would affect two valid government ***891** interests. First, the store expansion, adjacent to a floodplain, would increase the risk of flooding by paving over a greater surface area. Second, the expanded store would increase traffic congestion on nearby streets. The court also conceded that there was a nexus between those impacts and the development

conditions in question-the dedication of an easement along the floodplain for a public greenway, and the dedication of an additional easement for a bicycle path. (*Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 313, 114 S.Ct. at p. 2314].) The court found, however, the nexus to be insufficient. There must be a "rough proportionality" between the development impact and the dedication, and a public agency "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." (*Id.* at pp. ___-___ [129 L.Ed.2d at p. 320, 114 S.Ct. at pp. 2319-2320], fn. omitted.)

The *Dolan* court, like the *Nollan* court, reiterated that its holding depended in part on the special protection that the takings clause affords against the physical occupation of private property by the government. The development conditions in *Dolan* "were not simply a limitation on the use petitioner might make of her own parcel, but a requirement that she *deed* portions of her property to the city. In *Nollan*, *supra*, we held that governmental authority to exact such a condition was circumscribed by the Fifth and Fourteenth Amendments. Under the well-settled doctrine of 'unconstitutional conditions' the government may not require a person to give up a constitutional right-here the right to receive just compensation when property is taken for a public use-in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit." (*Dolan*, *supra*, 512 U.S. at pp. ___-___ [129 L.Ed.2d at p. 316, 114 S.Ct. at pp. 2316-2317], italics added.) The *Dolan* court found an additional reason for treating the dedication in question according to a higher standard. Most land-use regulations "involve[] essentially legislative determinations classifying ... areas of the city, whereas here the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel." (*Id.* at p. ___ [129 L.Ed.2d at p. 316, 114 S.Ct. at p. 2316].) The court also made clear that in such cases the burden rests with the city "to justify the required dedication." (*Id.* at p. ___, fn. 8 [129 L.Ed.2d at p. 320, 114 S.Ct. at p. 2320].)

Are development fees more like dedications, which will receive a heightened judicial scrutiny, or like zoning and other land-use restrictions, which are reviewed with greater deference? The answer to that question is not simple-to some extent monetary exactions are sui generis. But in one fundamental sense, monetary exactions are more like zoning restrictions: like these restrictions they do not involve a physical invasion of property, ***892** but merely a diminution in its economic value. As such, development fees may be placed in a class not only with such land use regulations, but also with other sorts of economic regulations that may significantly reduce the profit or value derived from property, yet are not deemed to be takings unless the regulations are arbitrary or confiscatory. (See *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 292-297 [32 Cal.Rptr.2d 807, 878 P.2d 566] [rate regulation can only be a taking if confiscatory]; *United States v. Sperry Corp.* (1989) 493 U.S. 52, 60 [107 L.Ed.2d 290, 301, 110 S.Ct. 387] [reasonable user fees that reduce the value of arbitration award not a taking].)

It could be argued that the appropriation of a property owner's money, in the form of a development fee, can be considered a "physical invasion" of monetary assets, and therefore as constitutionally objectionable as the physical occupation of real property. The United States Supreme Court has decisively rejected such equivalency. In *United States v. Sperry Corp.*, *supra*, 493 U.S. 52 (*Sperry*), a case that will be discussed at greater length below, the court upheld a deduction of a percentage of an award received from the Iran-United States claims tribunal as a reasonable user fee. Plaintiff corporation argued that such a dedication "was akin to a 'permanent physical occupation' of its property and therefore was a per se taking requiring just compensation [citing *Loretto*]." (*Id.* at p. 62, fn. 9 [107 L.Ed.2d at p. 303], italics omitted.) The court responded: "It is artificial to view a deduction of a percentage of a monetary award as physical appropriations of property. Unlike real or personal property, money is fungible. No special constitutional importance attaches to the fact that the Government deducted its charge directly from the award rather than requiring [plaintiff] to pay it separately. If the deduction in this case were a physical occupation requiring just compensation, so would be any fee for services, including a filing fee that must be paid in advance. Such a rule would be an extravagant extension of *Loretto*." (*Ibid.*)

In fact, unlike the physical appropriation of real property, the government "takes" money from property owners in numerous circumstances with typically minimal constitutional constraints, as discussed im-

mediately below.

B. *Constitutional Review of Taxes, Assessments, User Fees, and Other Fees.*

To put the matter simply, the taking of money is different, under the Fifth Amendment, from the taking of real or personal property. The imposition of various monetary exactions-taxes, special assessments, and user fees-has been accorded substantial judicial deference. As elaborated below, many if ***893** not most development fees resemble such exactions in that they are categorically applied to a general class-to all developments or to certain types of development. The imposition of such development fees, like other general fees, has also been given substantial deference. What follows is a brief account of the constitutional standards used for determining the validity of these various types of monetary exactions.

First, government is obviously able, constitutionally, to take money from property owners as part of a valid scheme of taxation. The separation of powers doctrine dictates that courts allow states and their subdivisions considerable flexibility in the imposition of varying tax burdens on different classes of taxpayers. "Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality .... [States] may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. [They are] not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." (*Allied Stores of Ohio v. Bowers* (1959) 358 U.S. 522, 526-527 [3 L.Ed.2d 480, 484, 79 S.Ct. 437].) Courts will not invalidate a state taxation scheme unless the classifications used are without "rational basis" and are "palpably arbitrary." (*Id.* at p. 527 [3 L.Ed.2d at p. 485].)

Of particular relevance for the issue of development fees, California courts have upheld on numerous occasions excise taxes that charge fees on new development for purposes of raising general revenue, in which no close "nexus" or "reasonable relationship" is required. (See *Centex Real Estate Corp. v. City of Vallejo* (1993) 19 Cal.App.4th 1358 [24 Cal.Rptr.2d 48] [upholding excise tax of $3,000 per unit of residential development and $.30 per square foot of nonresidential development]; *The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656 [175 Cal.Rptr. 336, 630 P.2d 521] [upholding $1,000 fee for sale of new or converted condominiums]; *Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 486 [141 Cal.Rptr. 36] [upholding excise tax of $500 per bedroom, up to a maximum of $1,000 per dwelling unit]; *Associated Home Builders, Inc. v. City of Newark* (1971) 18 Cal.App.3d 107 [95 Cal.Rptr. 648] [upholding per-bedroom excise tax].) As the Court of Appeal recently explained in *Centex Real Estate Corp., supra*, 19 Cal.App.4th at page 1364: " '[A]n excise tax is a "tax on the exercise of one of the incidences of property ownership," such as the ability to transfer or devise property or the ability to use, store, or consume it.' " Accordingly, "[a]n excise tax may properly be imposed on the privilege of developing property" as one such incidence of property ownership. (*Ibid.*) ***894**

While the takings clause is concerned in part with preventing those whose property has been appropriated or destroyed by government action from "bear [ing] public burdens which, in all fairness and justice, should be borne by the public as a whole" (*Armstrong v. United States* (1960) 364 U.S. 40, 49 [4 L.Ed.2d 1554, 1561, 80 S.Ct. 1563]), the equal protection clause generally permits government to impose unequal tax burdens on individuals as long as they are rationally based. There is no indication that *Nollan* and *Dolan* have superseded equal protection doctrine in the realm of taxation, even if the taxes affect the value of property or the profits from development. But if a municipality can constitutionally impose a development tax as long as it is rationally based, why is a higher level of constitutional scrutiny required when, as in the case of generally applicable development fees, the "tax" is earmarked for use in alleviating specific development impacts rather than for the general fund?

Another kind of monetary exaction on property owners which is subject to a fairly deferential standard of judicial review is special assessments. Special assessment districts are established to permit cities and counties to charge groups of property owners for improvements from which they will especially benefit; the individual assessments are to be calculated in proportion to the estimated benefits to the parcels against which they are assessed. (Sts. & Hy. Code, §§ 10203-10204; *Dawson v. Town of Los Altos Hills*

(1976) 16 Cal.3d 676, 683-684 [129 Cal.Rptr. 97, 547 P.2d 1377] (*Dawson*).) Although no recent California case considers a takings challenge to a special assessment, the case of *Waters v. Montgomery County* (1994) 337 Md. 15 [650 A.2d 712] is directly relevant. In that case, Maryland's highest court upheld a "development impact tax" that functioned much like a benefit assessment or excise tax, imposing monetary exactions on all development within certain undeveloped areas of Montgomery County according to a per-residential-unit or per-square-foot measurement, and spending the funds to improve roads and other transportation facilities within these areas. (*Id.* at p. 714.) The court considered an equal protection challenge to the fee, and upheld the fee as an economic regulation with a "rational basis"-it was reasonable to conclude that development in the two areas would lead to a need for increased transportation facilities. (*Id.* at pp. 721-723.) The court also rejected the argument that the takings clause, as interpreted by *Dolan*, requires that such an assessment be subject to greater constitutional scrutiny than the equal protection clause would demand. It concluded that *Dolan* was distinguishable in part because it required that the property owner " 'deed portions of the property to the city.' " (*Id.* at p. 724.) The tax in question neither compelled a physical invasion of the property nor denied " 'all economically ***895** beneficial or productive use of [the] land,' " and was therefore not a taking. (*Ibid.*) [FN1]

> FN1 Although there are no recent takings cases in California involving special assessments, a challenge to a special assessment district is typically framed in terms somewhat similar to a takings challenge-that a property owner is being asked to pay for services from which he or she does not specially benefit, and which should be borne by the public as a whole through taxation. (See *Knox v. Orland* (1992) 4 Cal.4th 132, 143 [14 Cal.Rptr.2d 159, 841 P.2d 144] [assessment is challenged as failing to provide special benefits and is therefore a "special tax"].) But as we have stated: "The scope of judicial review of such [assessments] is ... narrow. 'The board of supervisors is the ultimate authority which is empowered to finally determine what lands are benefited and what amount of benefits shall be assessed against the several parcels benefited .... This determination is made after a full hearing accorded to all persons interested to make such objection as they see fit. In such a case the court will not declare the assessment void unless it can plainly see from the face of the record, or from facts judicially known, that the assessment so finally confirmed is not proportional to the benefits, or that no benefits could accrue to the property assessed." (*Dawson*, *supra*, 16 Cal.3d at p. 684; see also *Knox v. Orland*, *supra*, 4 Cal.4th 132, 147 [reaffirming the validity of the *Dawson* standard]; see also *J.W. Jones Companies v. City of San Diego* (1984) 157 Cal.App.3d 745 [203 Cal.Rptr. 580] [approving benefit assessment for new development based on long-range estimates of the need for public facilities generated by the new development].)
>
> Moreover, even if a special assessment is found to be disproportionate to the benefit provided, and therefore a "special tax" within the meaning of article XIII A, section 4 of the California Constitution, it does not follow that the assessment would also be a taking. The conclusion that a development fee is really a special tax only signifies that the fee cannot be adopted without the approval of two-thirds of the electorate, not that it cannot be lawfully adopted at all, as would be the case were the assessment a taking.

The government is also given broad discretion to charge user fees, and the recent case of *Sperry*, *supra*, 493 U.S. 52, makes clear that judicial review of such fees under the takings clause is similarly narrow. In that case the court upheld against a takings challenge the deduction of a portion of a judgment awarded to plaintiff corporation from the Iranian government in order to pay for the expenses of the Iran-United States Claims Tribunal, although the corporation claimed not to have proportionately benefited from the tribunal. (*Id.* at pp. 63-64 [107 L.Ed.2d at p. 304].) As the *Sperry* court reaffirmed, "the Just Compensation Clause 'has never been read to require the ... courts to calculate whether a specific individual has suffered burdens ... in excess of the benefits received' in determining whether a 'taking' has occurred." (*Id.* at p. 61, fn. 7 [107 L.Ed.2d at p. 302].) In order to withstand a takings challenge, a user fee does not have to be "precisely calibrated to the use that a party makes of Government services.... All that we have required is

that the user fee be a " 'fair approximation of the cost of benefits supplied.' " (*Id.* at p. 60 [107 L.Ed.2d at p. 301].) The court recognized "that when the Federal Government applies user charges to a large number of parties, it probably will charge a user more or less than it would under a perfect user-fee system, but we [decline] to impose a requirement that the Government 'give weight to every factor affecting appropriate compensation ***896** ....' " (*Id.* at p. 61 [107 L.Ed.2d at p. 302]; see also *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980) 449 U.S. 155, 163 [66 L.Ed.2d 358, 366, 101 S.Ct. 446] [user fees will be upheld if they have some police power justification].)

Many development fees bear a close resemblance to the excise taxes, assessment fees and user fees discussed above. They are perhaps best characterized as a special assessment placed on developing property, calculated according to preestablished legislative formulae based on square footage or per unit of development. (See *J.W. Jones Companies v. City of San Diego, supra*, 157 Cal.App.3d 745 [fee apportioning projected future public costs of development among developers in several areas of the city]; see also *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459 [28 Cal.Rptr.2d 734] [$4,000 per lot environmental mitigation fee]; *Garrick Development Co. v. Hayward Unified School Dist.* (1993) 3 Cal.App.4th 320 [4 Cal.Rptr.2d 897] [school fees of $1.50 per square foot of nonresidential development]); *Blue Jeans Equities West v. City and County of San Francisco* (1992) 3 Cal.App.4th 164, 170-171 [4 Cal.Rptr.2d 114] [transportation fee of up to $5 per square foot levied on commercial development]; *Commercial Builders v. Sacramento* (9th Cir. 1991) 941 F.2d 872, 874-875 [upholding low-income housing fee on commercial development according to legislated formula]; *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218 [1 Cal.Rptr.2d 818] [school fees of $1.50 per square foot].) Courts have granted considerable discretion to local government to impose such fees, and have upheld them against takings and related challenges. (See, e.g., *Garrick Development Co. v. Hayward Unified School Dist., supra*, 3 Cal.App.4th at p. 337; *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd., supra*, 23 Cal.App.4th at pp. 1477-1478; *Blue Jeans Equities West v. City and County of San Francisco, supra*, 3 Cal.App.4th at pp. 170-171; *Commercial Builders v. Sacramento, supra*, 941 F.2d at pp. 874-875.)

The above cases illustrate the difference, for purposes of takings clause jurisprudence, between judicial review of the government's physical taking of property and its charging of fees. A comparison of these cases with *Loretto, supra*, 458 U.S. 419, brings this difference into clearer focus. While laws that impose generally applicable taxes, assessments and fees will be upheld if they are rationally based, an equivalent, generally applicable measure that authorizes the physical occupation of a small portion of property belonging to a large class of property owners-forced access for cable television wires and boxes-is deemed to be a taking. (*Loretto, supra*, 458 U.S. at p. 438 [73 L.Ed.2d at p. 884].) It is therefore illogical doctrinally to assert, as plaintiff and his numerous amici curiae do in this case, that ***897** development fees will invariably be subject to the same rigorous constitutional scrutiny as compelled dedications of property.

In sum, it does not appear that *Nollan* or *Dolan* alter the restricted judicial review applicable to general governmental fees-a restriction rooted in the separation of powers doctrine-merely because a property owner can recast his challenge to a fee as a takings claim, asserting that he was being asked to pay for a disproportionate share of public improvements or services in exchange for a development permit. On the contrary, the cases show that the constitutionality of such fees will be judged under a standard of scrutiny closer to the rational basis review of the equal protection clause than the heightened scrutiny of *Nollan* and *Dolan*.

This is not to imply that legislative development fees do not implicate the takings clause. Because these fees are forms of land use regulation, they must "advance legitimate state interests." (*Agins v. Tiburon, supra*, 447 U.S. at p. 260 [65 L.Ed.2d at p. 112].) A disproportionate fee raises the possibility of arbitrary or discriminatory government action. But *Nollan* and *Dolan* do not change the basic principle that courts will not unduly interfere with the essentially legislative function of adopting fees and fee structures that advance the public interest. In other words, such fees are " public program [s] adjusting the benefits and burdens of economic life to promote the common good" which will be reviewed by courts in a more deferential manner than physical invasions of property. (*Penn Central Transp. Co. v. New York City,*

supra, 438 U.S. at p. 124 [57 L.Ed.2d at p. 648].)

Of course, a court's constitutional inquiry will vary with the nature of the state interest purporting to justify the monetary exaction under review. If the government's interest is in raising revenue generally, then courts will uphold the tax so long as the special burden it imposes on developers is rationally based. If, as in the case of the art in public places fee at issue in this case, the fee is for the purpose of furthering certain legitimate aesthetic objections, then this fee will be upheld if it can be shown to substantially further those objections. If the fee is imposed to mitigate the impacts of development, then it will be upheld if there is a reasonable relationship between the fee and the development impact. (See *Associated Home Builders etc., Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 640 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847].) If the fee is defined as a user fee, then the fee will be upheld if there is a reasonable relationship between the government's cost of service and the fee. But in each of these cases, the degree of scrutiny is not appreciably different. Courts will, for federal constitutional purposes, defer to the legislative capacity of the states and their subdivisions to calculate and charge fees designated for legitimate government objectives, unless the fees are plainly arbitrary or confiscatory. ***898**

There are, of course, a number of legal constraints in this state-other than the Fifth Amendment-on the government's ability to impose development fees. Government Code section 66000 et seq. extensively regulates the imposition of development fees, including requirements that the purpose of the fee must be identified with specificity, and that a "reasonable relationship" must exist between the fee's use and the type of development project on which the fee is imposed. (Gov. Code, § 66001, subd. (a)(3).) [FN2] The statutory scheme also mandates a public hearing process for the adoption of a fee, and a procedure for the refund of unused portions of the fee. (Gov. Code, §§ 66001, subds. (e) & (f), 66016-66018; see also *Garrick Development Co. v. Hayward Unified School Dist., supra*, 3 Cal.App.4th 320.) Moreover, a development fee which exceeds the burdens and benefits of development will be found to be a special tax that requires two-thirds voter approval under article XIII A, section 4 of the California Constitution. (See *Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1220 [265 Cal.Rptr. 347] [invalidation of excessive fire hydrant fee as a special tax]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1984) 165 Cal.App.3d 227, 238 [211 Cal.Rptr. 567] [invalidation of water system hookup fee as a special tax].) ***899**

FN2 I agree with the plurality that Government Code section 66001 incorporated a "reasonable relationship" standard set forth in *Associated Home Builders etc., Inc. v. City of Walnut Creek, supra*, 4 Cal.3d at page 640, and its progeny, a standard less exacting than *Dolan*' s "rough proportionality" test. A review of the legislative history of Assembly Bill No. 1600, 1987-1988 Regular Session (Assembly Bill No. 1600), which included section 66001, confirms that view. In an analysis of Assembly Bill No. 1600 by the Senate Local Government Committee immediately before the enactment of the bill, it was stated: "The U.S. Supreme Court's June 26 *Nollan* [case] overturned the California Coastal Commission's imposition of a lateral public access easement as a condition of approving a residential development in the coastal zone.... Some observers have interpreted this decision as an instruction to local agencies to find a more direct link between exactions and public purposes. [Assembly Bill No.] 1600 moves in this direction. The issue will be whether it goes far enough. Because the bill does not take effect until January 1, 1989, the Legislature will have ample opportunity to conform it with the *Nollan* case, if it chooses." (Sen. Local Gov. Com. Rep. on Assem. Bill No. 1600 (1987-1988 Reg. Sess.) as amended Aug. 18, 1987, p. 2.) The fact that the Legislature did not amend the bill after that indicates that it did not intend to fully incorporate the *Nollan* standard to development fees, much less the *Dolan* standard formulated seven years later. The same report also makes clear that the "reasonable relationship" standard of section 66001 was intended to "conform to case law," i.e., *Associated Home Builders* and related California cases. (Sen. Local Gov. Com. Rep. on Assem. Bill No. 1600 at p. 3.)

Whether the less demanding statutory standard or more demanding constitutional

> standard applies is ultimately a constitutional question and depends, as I have argued, and as the other members of this court appear to agree, on whether or not the fee is generally applicable. Whichever standard applies, the plurality is, of course, correct in concluding that anyone challenging either the statutory or constitutional validity of a development fee must follow the procedures set forth in Government Code section 66020 et seq. And, while section 66001 cannot be said to have incorporated the *Nollan/Dolan* standard in any formal sense, I agree with the plurality that "the term 'reasonable relationship' embraces both constitutional and statutory meanings which, for all practical purposes, have merged *to the extent* that the *Dolan* decision applies to development fees ...." (Plur. opn., *ante*, at p. 867, italics in original.)

Even under more deferential review, a court's inquiry into the validity of the reasonable relationship between a development fee and a development impact will not be a "rubber stamp." (See, e.g., *Shapell Industries, Inc. v. Governing Board, supra*, 1 Cal.App.4th 218, 235-236; *Balch Enterprises, Inc. v. New Haven Unified School Dist.* (1990) 219 Cal.App.3d 783, 794-795 [268 Cal.Rptr.2d 543].) [FN3] But *Nollan* and *Dolan* in most cases impose no *additional* constitutional burden on the government to justify development fees beyond the burden it already bears under the state constitution and statute. (See *Garrick Development Co. v. Hayward Unified School Dist., supra*, 3 Cal.App.4th at p. 337; *Blue Jeans Equities West v. City and County of San Francisco, supra*, 3 Cal.App.4th at p. 171.)

> FN3 Indeed, it is arguable that even under a more deferential standard of review, the recreation fee in this case would have been invalid, because it was based on a fundamental methodological or conceptual flaw. (See, e.g., *Shapell Industries, Inc. v. Governing Board, supra*, 1 Cal.App.4th at pp. 235-236 [school fee erroneously attributing all future expansion of enrollment to new development partially invalid].)

In sum, general development fees will usually be subject to a less exacting standard of review under the takings clause than the physical taking of property.

C. *Nollan, Dolan and the Recreation Fee.*

Nonetheless, I agree with the plurality that a somewhat higher level of constitutional scrutiny should be applied to a development fee when it is imposed "neither generally nor ministerially, but on an individual and discretionary basis." (Plur. opn., *ante*, at p. 876.) The heightened scrutiny under these circumstances is derived from *Nollan*'s and *Dolan*'s central concern that government not convert a valid regulation of land use into " 'an out-and-out plan of extortion' " (*Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at p. 317, 114 S.Ct. at p. 2317], quoting *Nollan, supra*, 483 U.S. at p. 837 [97 L.Ed.2d at p. 689]) that does not advance a *legitimate* governmental objective. Although development fees are not physical takings of property, they bear greater similarity to physical takings than to zoning and other such land-use regulations in this sense: both physical and monetary exactions require developers to directly contribute valuable assets to the public weal in exchange for permission to develop their property. In both cases, there is a potential for the government to engage in extortionate behavior. This risk diminishes when the fee is formulated according to preexisting statutes or ordinances which purport to rationally allocate the costs of development among a general class of developers or property owners-indeed, as discussed above, the separation of powers doctrine clothes such a fee in a presumption of constitutionality. But when the fee is ***900** ad hoc, enacted at the time the development application was approved, there is a greater likelihood that it is motivated by the desire to extract the maximum revenue from the property owner seeking the development permit, rather than on a legislative policy of mitigating the public impacts of development or of otherwise reasonably distributing the burdens of achieving legitimate government objectives.

Indeed, even in the case of zoning regulations, to which courts have been traditionally deferential, a more rigorous form of judicial review, fueled by a suspicion of legislative motive, has been employed when the regulation applies uniquely to a single property owner-so-called "spot zoning." Spot zoning is said to exist " '[w]here a small parcel is restricted and given less rights than the surrounding property ....' " (*Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 960 [2 Cal.Rptr.2d 638].) When the zoning ordinance appears to subject a property owner to a spe-

cial restriction not applicable to similarly situated adjacent property, courts will conduct a more searching inquiry into the reasons and motives of the legislative body to determine if the zoning is arbitrary and discriminatory. (See *Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 338 [175 P.2d 542]; *Ross v. City of Yorba Linda, supra*, 1 Cal.App.4th at pp. 962-963; *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337 [178 Cal.Rptr. 723]; see also Longtin, California Land Use (1995 supp.) § 1.34.) As explained in *Arnel Development Co.*: "The usual test when a zoning ordinance is attacked as being in excess of the police power is whether or not the ordinance bears a substantial and reasonable relationship to the public welfare. [Citations.] However, '[t]he principle limiting judicial inquiry into the legislative body's police power objectives does not bar scrutiny of a quite different issue, that of discrimination against a particular parcel of property. "A city cannot unfairly discriminate against a particular parcel of land, and the courts may properly inquire as to whether the scheme of classification has been applied fairly and impartially in each instance." ' " (*Arnel, supra*, 126 Cal.App.3d at p. 336.)

In the same manner, when a municipality singles out a property developer for a development fee not imposed on others, a somewhat heightened scrutiny of that fee is required to ensure that the developer is not being subject to arbitrary treatment for extortionate motives. These singular fees present a greater possibility that the government is unfairly imposing disproportionate public burdens on a lone, and therefore particularly vulnerable, property owner. Hence the need for closer judicial review. [FN4]

> FN4 I note that the distinction between generally applicable regulations and those imposed discretionarily on a single-property owner is critical in the context of takings jurisprudence only when monetary fees, rather than the physical occupation of land, is in question. As explained above, even generally applicable laws which authorize the physical occupation of property are takings (see *Loretto, supra*, 458 U.S. at pp. 436-437 [73 L.Ed.2d at p. 883]), or, in the case of regulations that occur in the development permit process, subject to a greater presumption that a taking has occurred. (*Dolan*, *supra*, 512 U.S. at pp. ___-___ [129 L.Ed.2d at pp. 311-312, 322-323, 114 S.Ct. at pp. 2313, 2321-2322].) Thus in *Dolan*, the bicycle path dedication regulations were legislatively formulated, derived from the City of Tigard's Community Development Code, which mandated dedication of land for bicycle pathways consistent with a bicycle/pedestrian pathway plan. (*Id.* at p. ___ [129 L.Ed.2d at pp. 311-312, 114 S.Ct. at p. 2313].) Although it may have been constitutionally permissible for the city to impose a bicycle path "tax" or assessment on all downtown developers, with little or no showing of the individual impact of each development, it was not similarly constitutional to compel developers to cooperate in the city's land banking scheme by requiring them to dedicate a portion of their property to the city for a bicycle path in fulfillment of the city's general plan, irrespective of the public impacts of their developments.

That is not to imply that a local government's actions will be subject to heightened scrutiny each time it engages in the *individualized* assessment of ***901** a development project's public impacts. Indeed, such assessments may be preferable, for reasons of fairness and accuracy, to fees that are completely predetermined according to rigid legislative formulae, and it would be illogical to impose on them more formidable constitutional hurdles. But when, as in this case, the local government exacts a type of development fee which is imposed on no one else, and which is based on no preexisting legislative guidelines, a more searching constitutional inquiry into the basis of the fee is required.

Thus, the type of judicial review set forth in *Nollan* and *Dolan* is necessary, under the limited circumstances described above, to ensure "that the [government's] monopoly power over development permits is not illegitimately exploited by imposing conditions that lack any logical affinity to the public impact of a particular land use." (Plur. opn, *ante*, at p. 876.) I therefore conclude that the recreation fee at issue in the present case is required to meet the "rough proportionality" standard prescribed under *Dolan.*

II.

As stated above, I concur in the plurality's analysis of the recreation fee. I would add two additional

points.

First, this is not a case in which the government has asserted an interest in the protection of specific facilities or improvements, as when government regulates the closure or conversion of rental housing. (See *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 898-899 [223 Cal.Rptr. 379] [controls on conversion of residential hotels and requirements to contribute to replacement costs upheld]; *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97 [207 Cal.Rptr. 285, 688 P.2d 894] [upholding ordinance controlling exit from rental housing business]; ***902**Gov. Code, § 65863.7, subd. (e) [authorizing local governments to require that mobilehome park owners who close their facilities pay the "reasonable costs of relocation"]; Gov. Code, § 7060.1, subd. (c)(1) [affirming the power of public entities to "mitigate any adverse impact on persons" displaced as the result of the closure of residential hotels].) In such cases, the government may have a constitutionally legitimate interest in preserving an existing private facility that has public value, and in requiring mitigation fees if the facility is closed or put to a different use. But in the present case, the City had asserted no interest in preserving any particular facility, and had, indeed, permitted without condition the demolition of plaintiff's health club. As the plurality correctly conclude, the sole interest advanced by the City is in the preservation of a type of land use rather than of a facility, and any recreational fee must be measured in terms of the loss of that use.

Second, it should be recognized that although the City must employ a "rough proportionality" analysis on remand, the issue before it is a different one from that presented in *Nollan* and *Dolan*. In both those cases, the courts assumed that the developments in question had public impacts of some magnitude but found the evidence lacking that the taking of public easements significantly mitigated those impacts. (*Nollan*, *supra*, 483 U.S. at pp. 838-839 [97 L.Ed.2d at p. 690]; *Dolan*, *supra*, 512 U.S. at p. ___ [129 L.Ed.2d at pp. 321-323, 114 S.Ct. at pp. 2320-2322].) The question that must be addressed in the present case, on the other hand, is whether and to what extent the change in the recreational land use designation of plaintiff's property had a public impact-the loss of recreational opportunities to the residents the City-that would justify a special recreational fee. But assuming that a public impact is identified and a fee of some amount is constitutionally justified, there is no question that the City's proposed use of such fee-to construct public tennis courts or other such facilities-would directly mitigate that impact.

Thus, although the City must calculate the amount of the recreation fee in terms of the added costs of inducing the creation of *private* recreational facilities attributable to the changed land use (plur. opn., *ante*, at p. 884), it is not constitutionally forbidden from determining that the best use of the fee is to build *public* tennis courts or other facilities. It is the role of the legislative body, rather than the courts, to determine the best uses of the revenue obtained from a development fee, as long as the expenditure of the fee is reasonably related to the alleviation of the development impact that is its purported justification.

I also agree with the plurality that the art fee is a generally applicable fee substantially related to legitimate aesthetic objectives promoted by the City. It is therefore constitutional, and not subject to the *Nollan*/*Dolan* analysis. ***903**

KENNARD, J.,

Concurring and Dissenting.- (7c) I concur in the judgment insofar as it upholds the "art in public places" fee. I agree with the majority that this fee, imposed under an ordinance of general applicability, is not subject to the "essential nexus" and "rough proportionality" requirements that the United States Supreme Court established in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825 [97 L.Ed.2d 677, 107 S.Ct. 3141] (*Nollan*) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 [129 L.Ed.2d 304, 114 S.Ct. 2309] (*Dolan*) to determine whether certain development conditions violate the takings clause of the Fifth Amendment to the United States Constitution. I further agree with the majority that the art in public places fee is valid under traditional standards for judging the constitutional validity of development requirements of general applicability.

I dissent from the judgment insofar as it concludes that a city may impose a mitigation fee for the "loss" of private recreation facilities when property on which such facilities were located is redeveloped for a different use. On this issue, I agree with the majority that *Nollan-Dolan*'s "essential nexus" and " rough proportionality" requirements apply to monetary exactions that, like the mitigation fee involved here, are

imposed on a specific parcel of property as a condition of obtaining a development permit. I also agree with the majority that a city may not impose a recreational mitigation fee in an amount sufficient to replace the "lost" private facilities with new public facilities. But I do not agree with the majority that a city may require a landowner to compensate the city for the projected expenses of (1) imposing development restrictions on other land, or (2) otherwise encouraging the construction of other private recreation facilities to replace those "lost" through redevelopment.

I further disagree with the plurality's decision, as expressed in Justice Arabian's opinion, to "gloss" certain state laws regulating mitigation fees (Gov. Code, § 66000 et seq.; hereafter Mitigation Fee Act) to make their provisions coincide exactly with the restrictions imposed by the takings clause of the Fifth Amendment to the United States Constitution. This case was litigated under the takings clause, not our state's Mitigation Fee Act; thus, there is no need to construe the Mitigation Fee Act to decide this case.

I

Between 1973 and 1975, Richard Ehrlich (Ehrlich) acquired a 2.4-acre lot in Culver City (City) and applied for approval to develop a private tennis club and recreational facility on the site. City amended its zoning and general plan ordinances and adopted a specific plan to allow for the construction of the facility. When developed by Ehrlich, the site had five tennis ***904** courts, a heated swimming pool, a jacuzzi, paddle tennis courts, an aerobics area, and a separate building for lockers and other facilities.

In 1981, after a number of different managers had failed to make the private club operate at a profit, Ehrlich applied for approval to replace the private recreational club with an office building. When City's planning commission opposed the application on the ground that Ehrlich's private club filled a community need for recreational facilities, Ehrlich abandoned the application.

In August 1988, Ehrlich closed the facility because of continuing financial losses. He then applied for a specific plan amendment and tentative tract map approval to develop the site into a 30-unit townhouse project.

City initially expressed interest in acquiring the property for use as a city-owned recreational facility. Its staff advised City that Ehrlich's property offered an opportunity "to preserve an existing sports/recreational facility for public use and relieve pressure on existing facilities." An independent feasibility study commissioned by City concluded that, according to national standards, City needed two to four tennis courts and more public swimming pools and gymnasiums. Although the study criticized Ehrlich's operation of the private club formerly on the property, it also found that extensive capital improvements would be necessary to make the site financially viable for recreational use.

In March 1989, Ehrlich obtained a demolition permit and demolished the recreational facilities at the site, donating to City the equipment that was still useful after demolition. In April 1989, City decided, based on its independent feasibility study, that it did not have sufficient funds to acquire the site and use it as a public sports complex. It also decided not to assume the substantial financial risks involved in acquiring the property for operation on a membership, fee-for-service basis. Based on its concern about the loss of recreational land use, City denied Ehrlich's application to develop the site with townhouses.

In subsequent discussions with City, Ehrlich was told that his development application would be granted only if he agreed to build new recreational facilities for City. In response, Ehrlich filed, but did not serve, the petition for writ of mandate and complaint for damages in this case. City then rescinded its earlier denial of Ehrlich's application and granted it subject to certain conditions, including payment of a $280,000 recreational mitigation fee and a $33,200 "art in public places" fee. The recreational mitigation fee was to be used "for additional recreational facilities" to ***905** replace the facilities "lost" when Ehrlich ceased using his property for commercial recreational purposes. The amount of this fee was based on City's estimate of the cost of building public recreational facilities. The "art in public places " fee was imposed under a municipal ordinance that requires commercial projects with a value in excess of $500,000 to either provide art work for the project in an amount equal to 1 percent of the total value of the building or to pay an equal amount to the City art fund. [FN1]

FN1 City also required Ehrlich to pay a $30,000 parkland fee to provide for antic-

ipated increased demand on public park and recreational facilities by the residents of the proposed townhouse development. Ehrlich has not contested the validity of this fee and it is not at issue on this appeal.

Ehrlich formally protested both the recreational mitigation fee and the "art in public places" fee. When City denied his protests, Ehrlich amended his pleadings in this action to allege that the fees were an unconstitutional taking. Ehrlich and City then agreed that Ehrlich would pay the fees under protest, retaining the right to proceed with this lawsuit, in return for City's issuance of the necessary development permits.

In Ehrlich's action, the trial court invalidated the $280,000 recreational mitigation fee because it was "simply an effort to shift the cost of providing a public benefit to one no more responsible for the need than any other taxpayer." The trial court upheld the constitutionality of the $33,200 "art in public places" fee.

The Court of Appeal initially affirmed the trial court's judgment, but then granted a rehearing and, in a published opinion (*Ehrlich v. City of Culver City* (1993) 15 Cal.App.4th 1737 [19 Cal.Rptr.2d 468]), reversed the trial court's ruling that the $280,000 fee was an unconstitutional taking. The Court of Appeal reasoned that there was a substantial nexus between the proposed project and the fee because the fee compensated City for the burden to the community caused by the "loss" of Ehrlich's private recreational facilities. (*Id.* at p. 1750.) The United States Supreme Court then granted certiorari and remanded the case to the Court of Appeal "for further consideration in light of *Dolan v. City of Tigard*, 512 U.S. 374 [129 L.Ed.2d 304, 114 S.Ct. 2309]...." (*Ehrlich v. City of Culver City* (1994) 512 U.S. ___ [129 L.Ed.2d 854, 114 S.Ct. 2731-2732].) On remand, a divided Court of Appeal, this time in an unpublished opinion, again upheld the $280,000 recreational mitigation fee. We granted review.

II

The Fifth Amendment to the United States Constitution, made applicable to state and local governments by the Fourteenth Amendment, prohibits the ***906** government from taking private property for public use without just compensation. "One of the principal purposes of the Takings Clause is 'to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.' " (*Nollan, supra*, 483 U.S. 825, 835-836, fn. 4 [97 L.Ed.2d at p. 688], quoting *Armstrong v. United States* (1960) 364 U.S. 40, 49 [4 L.Ed.2d 1554, 1561, 80 S.Ct. 1563].)

In two landmark decisions- *Nollan, supra*, 483 U.S. 825, and *Dolan, supra*, 512 U.S. 374-the United States Supreme Court has defined the scope of the protection that the Fifth Amendment's takings clause affords in the context of conditions imposed on the granting of land use permits. In so doing, the court has drawn a distinction between conditions legislatively imposed by laws or rules of general applicability, on the one hand, and conditions adjudicatively imposed on specific parcels, on the other hand.

If a condition is imposed pursuant to an ordinance or rule of general applicability-that is, as a result of a legislative determination-the condition is constitutionally permissible unless the landowner meets his or her burden of proving that the condition either does not substantially advance a legitimate governmental purpose or deprives the landowner of any economically viable use of the land. (*Dolan, supra*, 512 U.S. 374, ___, fn. 8 [129 L.Ed.2d 304, 315-317, 320, 114 S.Ct. 2309, 2316-2317, 2320]; *Agins v. Tiburon* (1980) 447 U.S. 255, 260 [65 L.Ed.2d 106, 111-112, 100 S.Ct. 2138].)

If a condition is *adjudicatively* imposed, however, the government bears the burden of establishing (1) that the condition has an "essential nexus" with a legitimate government interest that would have justified denial of the permit, and (2) that there is a "rough proportionality" between the burden imposed by the condition and the projected impact of the proposed development. (*Dolan, supra*, 512 U.S. 374, ___ [129 L.Ed.2d 304, 317-318, 114 S.Ct. 2309, 2317-2319]; *Nollan, supra*, 483 U.S. 825, 834-837 [97 L.Ed.2d 677, 687-689].)

With these standards in mind, I proceed to the issues presented here.

A. *The Mitigation Fee Act*

As a preliminary matter, the plurality, as explained in Justice Arabian's opinion, decides to "gloss" the provisions of California's Mitigation Fee Act (Gov. Code, § 66000 et seq.) to make its provisions correspond to the standards that the United

States Supreme Court enunciated in *Nollan, supra,* 483 U.S. 825, and *Dolan, supra,* 512 U.S. 374. (Plur. opn., *ante*, at pp. 859-860, 866.) I see no need for this. Ehrlich has not challenged the validity ***907** of the Mitigation Fee Act, nor was this issue addressed by the trial court. In the event of some conflict between the standards set forth in the Mitigation Fee Act and the standards required by the federal Constitution, the constitutional standards must necessarily control. Accordingly, the issue in this case is constitutional, not statutory.

B. *The "Art in Public Places" Fee*

The "art in public places" fee was imposed under a municipal ordinance of general applicability. Accordingly, the $33,200 fee is constitutionally valid unless Ehrlich proves that the fee either does not serve a legitimate government purpose or deprives him of any economically viable use of the land. (*Dolan, supra,* 512 U.S. 374, ___, fn. 8 [129 L.Ed.2d 304, 315-317, 320, 114 S.Ct. 2309, 2316-2317, 2320].) Enhancing the aesthetic environment of the community is a legitimate government purpose, and Ehrlich has not demonstrated that the amount of the fee, which equals only 1 percent of the project value, makes the project economically unfeasible or otherwise deprives him of any economically viable use of the land. Accordingly, I concur with the majority that this fee is constitutionally permissible.

C. *The Recreational Mitigation Fee*

1. *Is Nollan-Dolan applicable to a monetary fee?*

In both *Nollan, supra,* 483 U.S. 825, and *Dolan, supra,* 512 U.S. 374, the condition at issue required the landowner to grant a possessory interest in part of the property to the public or to the government. Seizing on this factual circumstance, City here contends that *Nollan-Dolan*'s "essential nexus " and "rough proportionality" requirements apply only to such conditions and not to conditions requiring payment of a sum of money, however large. The majority rejects this contention, holding that the "essential nexus" and "rough proportionality" requirements imposed by the United States Supreme Court's construction of the takings clause apply not only to conditions requiring surrender of a possessory interest in land, but also to conditions requiring monetary payments, provided that the conditions are *adjudicatively* imposed in a discretionary permit process. (Plur. opn., *ante*, at pp. 860, 866-868; conc. & dis. opn. of Werdegar, J., *post*, at p. 912.) For the reasons given by the majority, I concur in this holding.

Because the $280,000 recreational mitigation fee was imposed on Ehrlich's development application individually, and not pursuant to an ordinance or rule of general applicability, the constitutionality of this fee is evaluated using the *Nollan-Dolan* "essential nexus" and "rough proportionality " analysis. ***908**

2. *Essential Nexus*

The first component in the *Nollan-Dolan* analysis is determining whether the challenged condition has an "essential nexus" with a legitimate government interest that would have justified denial of the permit. This component, in turn, may be broken down into three steps: (1) determining whether the government could have denied the permit application entirely; (2) identifying one or more legitimate government interests that would have justified denial of the permit application; (3) determining whether the condition has an "essential nexus" with the impact of the proposed development on one or more of the identified interests.

The denial of a land-use permit application effects a taking of the property, for which the government must pay compensation, if the denial does not substantially advance a legitimate state interest or if it deprives the owner of " 'economically viable use of his land.' " (*Dolan, supra,* 512 U.S. 374, ___ [129 L.Ed.2d 304, 316, 114 S.Ct. 2309, 2316], quoting *Agins v. Tiburon, supra,* 447 U.S. 255, 260 [65 L.Ed.2d 106, 112]; see also *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1016, 1017 [120 L.Ed.2d 798, 813, 112 S.Ct. 2886, 2894-2895].) Thus, it is necessary to determine whether denial of Ehrlich's permit application would have deprived him of economically viable use of his land. The majority entirely omits this part of the analysis.

Here, Ehrlich's permit application had two purposes: (1) to remove the specific plan restriction that Ehrlich's property be used only for a private recreational club; and (2) to authorize development of the property with a thirty-unit townhouse complex. The evidence presented in the record raises a substantial question as to whether a private recreational club was an economically viable use of the property. Ehrlich had attempted to use the property for this purpose for a period of years but was unable to make it profitable despite several changes of management. Moreover, City itself declined to assume ownership of the prop-

erty for the purpose of itself operating the private recreational club, concluding that the financial risk would be too great.

A conclusion that a private health club was not an economically viable use of the property would not mean, of course, that City was required to grant the specific alternative use that Ehrlich requested: a 30-unit townhouse complex. But it would mean that City would be required to authorize *some* economically viable alternative use, rather than simply denying all applications for redevelopment to other uses.

Although the record raises serious doubts on the issue, I need not and do not decide whether City could have completely denied Ehrlich's permit ***909** application on the basis of the government interest in maintaining adequate private recreational facilities because, as explained below, I conclude that the recreational mitigation fee fails another part of the *Nollan-Dolan* test.

Assuming, for purposes of argument, that a denial of Ehrlich's permit application would not have deprived him of an economically viable use of his property, would the condition that he pay a recreational mitigation fee have an "essential nexus" to a legitimate government interest?

I do not doubt that a city has a legitimate government interest in providing adequate recreational facilities, both public and private, for its residents. But a city's exaction of a "recreational mitigation fee" from a landowner as a condition of permit approval must satisfy the *Nollan-Dolan* requirement of an "essential nexus" between the fee and the city's interest in denying the proposed development application. (*Nollan, supra*, 483 U.S. 825, 837 [97 L.Ed.2d 677, 689].) [FN2] I need not decide in this case whether the recreational mitigation fee satisfies this essential nexus requirement, however, because as I explain below, the fee fails under the "rough proportionality" test.

FN2 Whether an essential nexus exists turns on the connection between the condition imposed on the development and "the projected impact of the proposed development" (*Dolan, supra*, 512 U.S. 374, ___ [129 L.Ed.2d 304, 317, 114 S.Ct. 2309, 2317]). The United States Supreme Court has not yet clarified whether "the projected impact" includes only positive effects such as the additional burdens that the new development will impose on the community (in this case, the increased demand for city services resulting from the addition of 30 townhouses) or also negative effects such as the reduction in the total area of land zoned for a particular use (in this case, the reduction in land designated for recreational uses) or the loss of public benefits from the preexisting use of the land (in this case, the benefits City residents derived from use of the athletic facilities).

3. *Rough Proportionality*

The second component in the *Nollan-Dolan* analysis is determining whether there is a "rough proportionality" between the burden imposed by the permit approval condition and the projected impact of the proposed development. (*Dolan, supra*, 512 U.S. 374, ___ [129 L.Ed.2d 304, 317-321, 114 S.Ct. 2309, 2317-2320].)

Because Ehrlich's proposed construction of 30 townhouses on his land would have increased the community's housing stock and thus the number of its residents, City could reasonably impose a fee to offset the increased demand on public recreational facilities attributable to the increase in population resulting from the development. City did exactly this by imposing a $30,000 " parkland" fee. (See fn. 1, *ante*.) Ehrlich has not disputed the validity of this fee.

The $280,000 recreational mitigation fee that City imposed on Ehrlich was designed not to offset the increased demand on public recreational ***910** facilities caused by the addition of 30 residential units, but instead to compensate for the "loss" of the private recreational club that had previously existed on the property. The distinction is crucial.

The majority partly rejects and partly accepts City's "lost use" or "lost opportunity" rationale for the recreational mitigation fee.

The majority rejects the rationale insofar as it is based on the assumption that a landowner may be required, as a condition to redeveloping property for a different use, to replace private facilities on the property with comparable public facilities. Thus, as the majority recognizes, City may not require Ehrlich to

build public recreational facilities to replace the private facilities that existed on his property, nor may it impose a fee in an amount calculated to achieve this end. As the majority aptly states, City "may not constitutionally measure the magnitude of its loss, or of the recreational exaction, by the value of facilities it had no right to appropriate without paying for." (Plur. opn., *ante*, at p. 883.)

But the majority accepts City's "lost use" or "lost opportunity" rationale insofar as it is based on the assumption that a landowner may be required, as a condition to redeveloping property for a different use, to underwrite any government expense likely to be incurred in the process of replacing private facilities on the property with comparable private facilities on other privately owned land. Thus, the majority concludes that City may charge Ehrlich a recreational mitigation fee measured either by "the additional administrative expenses incurred in redesignating other property within Culver City for recreational use" (plur. opn., *ante*, at p. 883; see also conc. & dis. opn. of Werdegar, J., *post*, at p. 912) or by the "monetary incentives" needed "to induce private health club development" on other land (plur. opn., *ante*, at p. 884; see also conc. & dis. opn. of Werdegar, J., *post*, at p. 912). I disagree. A fee calculated in either manner would require Ehrlich to bear a grossly disproportionate share of what is essentially a public expense.

The fundamental flaw in the majority's reasoning is the assumption that City, without violating the takings clause, could restrict Ehrlich's property to private recreational uses. As discussed above, such a restriction might well deprive Ehrlich of economically viable use of his land and be invalid on that basis. But even if constitutionally valid on that basis, the restriction would be invalid because it impermissibly singled out Ehrlich's property for special restriction. This is akin to prohibited spot zoning.

"Spot zoning occurs where a small parcel is restricted and given lesser rights than the surrounding property, as where a lot in the center of a business or commercial district is limited to uses for residential purposes thereby creating an 'island' in the middle of a larger area devoted to other ***911** uses." (*Viso v. State of California* (1979) 92 Cal.App.3d 15, 22 [154 Cal.Rptr. 580]; see also *Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 960-961 [2 Cal.Rptr.2d 638].) Because "spot zoning" discriminates against the parcel singled out for special restriction, it is invalid unless the government establishes some reasonable ground for the disparate treatment. (See *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 132 [57 L.Ed.2d 631, 634-635, 98 S.Ct. 2646]; *Nectow v. Cambridge* (1928) 277 U.S. 183, 188-189 [72 L.Ed. 842, 844-845, 48 S.Ct. 447]; *Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 340-341 [175 P.2d 542]; *Reynolds v. Barrett* (1938) 12 Cal.2d 244, 251 [83 P.2d 29].)

Although City has a legitimate government interest in the promotion of private recreational facilities adequate to meet the recreational needs of its residents, in advancing this public interest City may not single out individual landowners or small groups of landowners to bear a disproportionate share of the burden. This is precisely what City does when it permits only recreational uses on an individual parcel that is otherwise indistinguishable from surrounding parcels on which a much broader range of uses is permitted.

Here, Ehrlich initially voluntarily accepted the recreational use restriction in 1975 as a condition of approval of the specific plan for the property. So long as Ehrlich continued to accept the benefits of the specific plan, he might well have been estopped to challenge the validity of the restriction. But Ehrlich has now waived all benefits he received under the previous specific plan in order to redevelop the property for a different use. Having surrendered the benefits, he should no longer be required to bear the burden of the recreational use restriction. City should now permit Ehrlich to use his property in a manner consistent with the uses of surrounding parcels, without unfairly penalizing him for his unsuccessful attempt to operate a private recreational club.

Had Ehrlich applied in 1975 for approval to build townhouses rather than a private recreational club, City would have had no reason to impose a fee for the "loss" of a recreational land-use designation. Absent some evidence that Ehrlich gained some enduring advantage or City suffered some lasting detriment as a result of Ehrlich's unsuccessful efforts to operate a private recreational club on his land, the removal of the recreational use restriction imposed in 1975 will not support the imposition of any additional fee. (See Kmiec, *At Last, the Supreme Court Solves the Takings Puzzle* (1995) 19 Harv. J. L. & Pub. Pol'y. 147, 156,

fn. 43 [characterizing as an "extraordinary notion" the assertion "that once a private landowner has undertaken a permitted common law use, like [construction of] a private swimming pool or tennis court, he either must continue that use or must pay to stop"].) ***912**

For example, had Ehrlich received some subsidy as an inducement to accept the recreational use restriction, he might well be required to reimburse City for all or part of the subsidy upon abandonment of the use for which the subsidy had been given. But returning the subsidy he had received would be the extent of his obligation. There is neither justice nor logic in the majority's suggestion that Ehrlich may now be required to fund a subsidy to induce another landowner to accept a "spot zoning" of his or her property that would restrict that property to private recreational uses. Likewise, although Ehrlich may be required to pay an application fee to compensate for City's costs in processing his own permit applications, City may not require him also to underwrite City's administrative costs for land use proceedings relating to other parcels.

Conclusion

All of us must bear our fair share of the public costs of maintaining and improving the communities in which we live and work. But the United States Constitution, through the takings clause of the Fifth Amendment, protects us all from being arbitrarily singled out and subjected to bearing a disproportionate share of these costs. This constitutional protection does not evaporate when we discontinue a use of our property that we gratuitously undertook and that the government could not constitutionally have required us to continue, no matter how greatly the community may have benefited from that use.

Because I conclude that the trial court correctly decided the issues in this case, I would reverse the judgment of the Court of Appeal with directions to affirm the trial court's judgment.

Baxter, J., concurred.

WERDEGAR, J.,

Concurring and Dissenting.- (3b, 4e, 5d, 6c, 7d) I concur in the judgment. I also agree with the reasoning of the plurality opinion, except for that contained in part II, respecting the Mitigation Fee Act, Government Code section 66000 et seq. I agree with Justice Kennard there is no need for us to construe the act in order to decide this case. (Conc. and dis. opn. of Kennard, J., *ante*, at p. 903.) Accordingly, I would decline to do so.

The petition of appellant Richard K. Ehrlich for a rehearing was denied April 11, 1996. Kennard, J., and Baxter, J., were of the opinion that the petition should be granted. ***913**

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Supreme Court of the United States
James Patrick NOLLAN, et ux., Appellant
v.
CALIFORNIA COASTAL COMMISSION.

No. 86-133.
Argued March 30, 1987.
Decided June 26, 1987.

Property owners brought action against California Coastal Commission seeking writ of mandate. The Commission had imposed as a condition to approval of rebuilding permit requirement that owners provide lateral access to public to pass and repass across property. The Superior Court, Ventura County, William L. Peck, J., granted peremptory writ of mandate, and the Commission appealed. The California Court of Appeal, Abbe, J., 177 Cal.App.3d 719, 223 Cal.Rptr. 28, reversed and remanded with directions. Appeal was taken. The Supreme Court, Justice Scalia, held that Commission could not, without paying compensation, condition grant of permission to rebuild house on property owners' transfer to public of easement across beachfront property.

Reversed.

Justice Brennan filed a dissenting opinion in which Marshall joined.

Justice Blackmun filed a dissenting opinion.

Justice Stevens filed a dissenting opinion in which Justice Blackmun joined.

West Headnotes

[1] Eminent Domain 148 2.10(7)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(7) k. Exactions and Conditions. Most Cited Cases
(Formerly 148k2(1.2))

Although outright taking of uncompensated, permanent, public-access easement violates Fifth Amendment taking clause, conditioning property owners' rebuilding permit on granting of easement can be allowed for land use regulation if condition substantially furthers governmental purposes that justify denial of permit. U.S.C.A. Const.Amend. 5.

[2] Eminent Domain 148 2.27(2)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.27 Environmental Protection
148k2.27(2) k. Wetlands and Coastal Protection. Most Cited Cases
(Formerly 148k2(10))

California Coastal Commission could not, without paying compensation, condition grant of permission to rebuild house on property owners' transfer to public of easement across beachfront property. U.S.C.A. Const.Amend. 5.

*****3142 *825** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The California Coastal Commission granted a permit to appellants to replace a small bungalow on their beachfront lot with a larger house upon the condition that they allow the public an easement to pass across their beach, which was located between two public beaches. The County Superior Court granted appellants a writ of administrative mandamus and directed that the permit condition be struck. However,

the State Court of Appeal reversed, ruling that imposition of the condition did not violate the Takings Clause of the Fifth Amendment, as incorporated against the States by the Fourteenth Amendment.

Held:

1. Although the outright taking of an uncompensated, permanent, public-access easement would violate the Takings Clause, conditioning appellants' rebuilding permit on their granting such an easement would be lawful land-use regulation if it substantially furthered governmental purposes that would justify denial of the permit. The government's power to forbid particular land uses in order to advance some legitimate police-power purpose includes the power to condition such use upon some concession by the owner, even a concession of property rights, so long as the condition furthers the same governmental****3143** purpose advanced as justification for prohibiting the use. Pp. 3145-3148.

2. Here the Commission's imposition of the access-easement condition cannot be treated as an exercise of land-use regulation power since the condition does not serve public purposes related to the permit requirement. Of those put forth to justify it-protecting the public's ability to see the beach, assisting the public in overcoming a perceived "psychological" barrier to using the beach, and preventing beach congestion-none is plausible. Moreover, the Commission's justification for the access requirement unrelated to land-use regulation-that it is part of a comprehensive program to provide beach access arising from prior coastal permit decisions-is simply an expression of the belief that the public interest will be served by a continuous strip of publicly accessible beach. Although the State is free to advance its "comprehensive program" by exercising its eminent domain power and paying for access easements, it ***826** cannot compel coastal residents alone to contribute to the realization of that goal. Pp. 3148-3150.

177 Cal.App.3d 719, 223 Cal.Rptr. 28 (1986), reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, POWELL, and O'CONNOR, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post,* p. ----. BLACKMUN, J., filed a dissenting opinion, *post,* p. ----. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post,* p. ----.

Robert K. Best argued the cause for appellants. With him on the briefs were *Ronald A. Zumbrun* and *Timothy A. Bittle.*

Andrea Sheridan Ordin, Chief Assistant Attorney General of California, argued the cause for appellee. With her on the brief were *John K. Van de Kamp,* Attorney General, *N. Gregory Taylor,* Assistant Attorney General, *Anthony M. Summers,* Supervising Deputy Attorney General, and *Jamee Jordan Patterson.**

* Briefs of *amici curiae* urging reversal were filed for the United States by *Solicitor General Fried, Assistant Attorney General Habicht, Deputy Solicitor General Ayer, Deputy Assistant Attorneys General Marzulla, Hookano,* and *Kmiec, Richard J. Lazarus,* and *Peter R. Steenland, Jr.;* and for the Breezy Point Cooperative by *Walter Pozen.*

Briefs of *amici curiae* urging affirmance were filed for the Commonwealth of Massachusetts et al. by *James M. Shannon,* Attorney General of Massachusetts, and *Lee P. Breckenridge* and *Nathaniel S.W. Lawrence,* Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Don Siegelman* of Alabama, *John Steven Clark* of Arkansas, *Joseph Lieberman* of Connecticut, *Charles M. Oberly* of Delaware, *Robert Butterworth* of Florida, *Warren Price III* of Hawaii, *Neil F. Hartigan* of Illinois, *Thomas J. Miller* of Iowa, *Robert T. Stephan* of Kansas, *William J. Guste, Jr.,* of Louisiana, *James E. Tierney* of Maine, *J. Joseph Curran, Jr.,* of Maryland, *Hubert H. Humphrey III* of Minnesota, *William L. Webster* of Missouri, *Robert M. Spire* of Nebraska, *Stephen E. Merrill* of New Hampshire, *W. Cary Edwards* of New Jersey, *Robert Abrams* of New York, *Lacy H. Thornburg* of North Carolina, *Nicholas Spaeth* of North Dakota, *Dave Frohnmayer* of Oregon, *James E. O'Neil* of Rhode Island, *W.J. Michael Cody* of Tennessee, *Jim Mattox* of Texas, *Jeffrey Amestoy* of Vermont, *Kenneth O. Eikenberry* of Washington, *Charles G. Brown* of West Virginia, and *Donald J. Hanaway* of Wisconsin; for the Council of State Governments et al. by *Benna Ruth Solomon* and *Joyce Holmes Benjamin;* for Designated California Cities and Counties by *E. Clement Shute, Jr.;* and for the Natural Resources Defense Council et al. by *Fre-*

dric D. Woocher.

Briefs of *amici curiae* were filed for the California Association of Realtors by *William M. Pfeiffer;* and for the National Association of Home Builders et al. by *Jerrold A. Fadem, Michael M. Berger,* and *Gus Bauman.*

***827** Justice SCALIA delivered the opinion of the Court.

James and Marilyn Nollan appeal from a decision of the California Court of Appeal ruling that the California Coastal Commission could condition its grant of permission to rebuild their house on their transfer to the public of an easement across their beachfront property. 177 Cal.App.3d 719, 223 Cal.Rptr. 28 (1986). The California court rejected their claim that imposition of that condition violates the Takings Clause of the Fifth Amendment, as incorporated against the States by the Fourteenth Amendment. *Ibid.* We noted probable jurisdiction. 479 U.S. 913, 107 S.Ct. 312, 93 L.Ed.2d 286 (1986).

I

The Nollans own a beachfront lot in Ventura County, California. A quarter-mile north of their property is Faria County Park, an oceanside public park with a public beach and recreation area. Another public beach area, known locally as "the Cove," lies 1,800 feet south of their lot. A concrete seawall approximately eight feet high separates the beach portion of the Nollans' property from the rest of the lot. The historic mean high tide line determines the lot's oceanside boundary.

The Nollans originally leased their property with an option to buy. The building on the lot was a small bungalow, totaling 504 square feet, which for a time they rented to summer vacationers. After years of rental use, however, the building had fallen into disrepair, and could no longer be rented out.

828** The Nollans' option to purchase was conditioned on their promise to demolish the bungalow and replace it. In order to do so, under Cal.Pub.Res. Code Ann. §§ 30106, 30212, and 30600 (West 1986), they were required to obtain a coastal development*3144** permit from the California Coastal Commission. On February 25, 1982, they submitted a permit application to the Commission in which they proposed to demolish the existing structure and replace it with a three-bedroom house in keeping with the rest of the neighborhood.

The Nollans were informed that their application had been placed on the administrative calendar, and that the Commission staff had recommended that the permit be granted subject to the condition that they allow the public an easement to pass across a portion of their property bounded by the mean high tide line on one side, and their seawall on the other side. This would make it easier for the public to get to Faria County Park and the Cove. The Nollans protested imposition of the condition, but the Commission overruled their objections and granted the permit subject to their recordation of a deed restriction granting the easement. App. 31, 34.

On June 3, 1982, the Nollans filed a petition for writ of administrative mandamus asking the Ventura County Superior Court to invalidate the access condition. They argued that the condition could not be imposed absent evidence that their proposed development would have a direct adverse impact on public access to the beach. The court agreed, and remanded the case to the Commission for a full evidentiary hearing on that issue. *Id.,* at 36.

On remand, the Commission held a public hearing, after which it made further factual findings and reaffirmed its imposition of the condition. It found that the new house would increase blockage of the view of the ocean, thus contributing to the development of "a 'wall' of residential structures" that would prevent the public "psychologically ... from realizing a stretch of coastline exists nearby that they have every right ***829** to visit." *Id.,* at 58. The new house would also increase private use of the shorefront. *Id.,* at 59. These effects of construction of the house, along with other area development, would cumulatively "burden the public's ability to traverse to and along the shorefront." *Id.,* at 65-66. Therefore the Commission could properly require the Nollans to offset that burden by providing additional lateral access to the public beaches in the form of an easement across their property. The Commission also noted that it had similarly conditioned 43 out of 60 coastal development permits along the same tract of land, and that of the 17 not so conditioned, 14 had been approved when the Commission did not have administrative regulations in place allowing imposition of the condition, and the remaining 3 had not involved shorefront property. *Id.,* at 47-48.

The Nollans filed a supplemental petition for a writ of administrative mandamus with the Superior Court, in which they argued that imposition of the access condition violated the Takings Clause of the Fifth Amendment, as incorporated against the States by the Fourteenth Amendment. The Superior Court ruled in their favor on statutory grounds, finding, in part to avoid "issues of constitutionality," that the California Coastal Act of 1976, Cal.Pub.Res.Code Ann. § 30000 *et seq.* (West 1986), authorized the Commission to impose public access conditions on coastal development permits for the replacement of an existing single-family home with a new one only where the proposed development would have an adverse impact on public access to the sea. App. 419. In the court's view, the administrative record did not provide an adequate factual basis for concluding that replacement of the bungalow with the house would create a direct or cumulative burden on public access to the sea. *Id.,* at 416-417. Accordingly, the Superior Court granted the writ of mandamus and directed that the permit condition be struck.

The Commission appealed to the California Court of Appeal. While that appeal was pending, the Nollans satisfied ***830** the ****3145** condition on their option to purchase by tearing down the bungalow and building the new house, and bought the property. They did not notify the Commission that they were taking that action.

The Court of Appeal reversed the Superior Court. 177 Cal.App.3d 719, 223 Cal.Rptr. 28 (1986). It disagreed with the Superior Court's interpretation of the Coastal Act, finding that it required that a coastal permit for the construction of a new house whose floor area, height or bulk was more than 10% larger than that of the house it was replacing be conditioned on a grant of access. *Id.*, at 723-724, 223 Cal.Rptr., at 31; see Cal.Pub.Res.Code Ann. § 30212. It also ruled that the requirement did not violate the Constitution under the reasoning of an earlier case of the Court of Appeal, *Grupe v. California Coastal Comm'n*, 166 Cal.App.3d 148, 212 Cal.Rptr. 578 (1985). In that case, the court had found that so long as a project contributed to the need for public access, even if the project standing alone had not created the need for access, and even if there was only an indirect relationship between the access exacted and the need to which the project contributed, imposition of an access condition on a development permit was sufficiently related to burdens created by the project to be constitutional. 177 Cal.App.3d, at 723, 223 Cal.Rptr., at 30-31; see *Grupe, supra*, 166 Cal.App.3d, at 165-168, 212 Cal.Rptr., at 587-590; see also *Remmenga v. California Coastal Comm'n*, 163 Cal.App.3d 623, 628, 209 Cal.Rptr. 628, 631, appeal dism'd, 474 U.S. 915, 106 S.Ct. 241, 88 L.Ed.2d 250 (1985). The Court of Appeal ruled that the record established that that was the situation with respect to the Nollans' house. 177 Cal.App.3d, at 722-723, 223 Cal.Rptr., at 30-31. It ruled that the Nollans' taking claim also failed because, although the condition diminished the value of the Nollans' lot, it did not deprive them of all reasonable use of their property. *Id.*, at 723, 223 Cal.Rptr., at 30; see *Grupe, supra*, 166 Cal.App.3d, at 175-176, 212 Cal.Rptr., at 595-596. Since, in the Court of Appeal's view, there was no statutory or constitutional obstacle to imposition***831** of the access condition, the Superior Court erred in granting the writ of mandamus. The Nollans appealed to this Court, raising only the constitutional question.

II

[1] Had California simply required the Nollans to make an easement across their beachfront available to the public on a permanent basis in order to increase public access to the beach, rather than conditioning their permit to rebuild their house on their agreeing to do so, we have no doubt there would have been a taking. To say that the appropriation of a public easement across a landowner's premises does not constitute the taking of a property interest but rather (as Justice BRENNAN contends) "a mere restriction on its use," *post,* at 3154, n. 3, is to use words in a manner that deprives them of all their ordinary meaning. Indeed, one of the principal uses of the eminent domain power is to assure that the government be able to require conveyance of just such interests, so long as it pays for them. J. Sackman, 1 Nichols on Eminent Domain § 2.1[1] (Rev. 3d ed. 1985), 2 *id.*, § 5.01[5]; see 1 *id.*, § 1.42 [9], 2 *id.*, § 6.14. Perhaps because the point is so obvious, we have never been confronted with a controversy that required us to rule upon it, but our cases' analysis of the effect of other governmental action leads to the same conclusion. We have repeatedly held that, as to property reserved by its owner for private use, "the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.' " *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433, 102 S.Ct. 3164, 3175,

73 L.Ed.2d 868 (1982), quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 100 S.Ct. 383, 391, 62 L.Ed.2d 332 (1979). In ****3146** Loretto* we observed that where governmental action results in "[a] permanent physical occupation" of the property, by the government itself or by others, see 458 U.S., at 432-433, n. 9, 102 S.Ct., at 3174-3175, n. 9, "our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public ***832** benefit or has only minimal economic impact on the owner," *id.*, at 434-435, 102 S.Ct., at 3175-3176. We think a "permanent physical occupation" has occurred, for purposes of that rule, where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed, even though no particular individual is permitted to station himself permanently upon the premises.[FN1]

> FN1. The holding of *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980), is not inconsistent with this analysis, since there the owner had already opened his property to the general public, and in addition permanent access was not required. The analysis of *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979), is not inconsistent because it was affected by traditional doctrines regarding navigational servitudes. Of course neither of those cases involved, as this one does, a classic right-of-way easement.

Justice BRENNAN argues that while this might ordinarily be the case, the California Constitution's prohibition on any individual's "exclu[ding] the right of way to [any navigable] water whenever it is required for any public purpose," Art. X, § 4, produces a different result here. *Post*, at 3153-3154; see also *post*, at 3157, 3158-3159. There are a number of difficulties with that argument. Most obviously, the right of way sought here is not naturally described as one *to* navigable water (from the street to the sea) but *along* it; it is at least highly questionable whether the text of the California Constitution has any prima facie application to the situation before us. Even if it does, however, several California cases suggest that Justice BRENNAN's interpretation of the effect of the clause is erroneous, and that to obtain easements of access across private property the State must proceed through its eminent domain power. See *Bolsa Land Co. v. Burdick*, 151 Cal. 254, 260, 90 P. 532, 534-535 (1907); *Oakland v. Oakland Water Front Co.*, 118 Cal. 160, 185, 50 P. 277, 286 (1897); *Heist v. County of Colusa*, 163 Cal.App.3d 841, 851, 213 Cal.Rptr. 278, 285 (1984); *Aptos Seascape Corp. v. Santa Cruz*, 138 Cal.App.3d 484, 505-506, 188 Cal.Rptr. 191, 204-205 (1982). (None of these cases specifically addressed***833** the argument that Art. X, § 4 allowed the public to cross private property to get to navigable water, but if that provision meant what Justice BRENNAN believes, it is hard to see why it was not invoked.) See also 41 Op.Cal.Atty.Gen. 39, 41 (1963) ("In spite of the sweeping provisions of [Art. X, § 4], and the injunction therein to the Legislature to give its provisions the most liberal interpretation, the few reported cases in California have adopted the general rule that one may not trespass on private land to get to navigable tidewaters for the purpose of commerce, navigation or fishing"). In light of these uncertainties, and given the fact that, as Justice BLACKMUN notes, the Court of Appeal did not rest its decision on Art. X, § 4, *post*, at 3162, we should assuredly not take it upon ourselves to resolve this question of California constitutional law in the first instance. See, *e.g.*, *Jenkins v. Anderson*, 447 U.S. 231, 234, n. 1, 100 S.Ct. 2124, 2127, n. 1, 65 L.Ed.2d 86 (1980). That would be doubly inappropriate since the Commission did not advance this argument in the Court of Appeal, and the Nollans argued in the Superior Court that any claim that there was a pre-existing public right of access had to be asserted through a quiet title action, see Points and Authorities in Support of Motion for Writ of Administrative Mandamus, No. SP50805 (Super.Ct.Cal.), p. 20, which the Commission, possessing no claim to the easement itself, probably would not have had standing under California law to bring. See ****3147** Cal.Code Civ.Proc.Ann. § 738 (West 1980).[FN2]

> FN2. Justice BRENNAN also suggests that the Commission's public announcement of its intention to condition the rebuilding of houses on the transfer of easements of access caused the Nollans to have "no reasonable claim to any expectation of being able to exclude members of the public" from walking across their beach. *Post*, at 3158-3159. He cites our opinion in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984), as support for the peculiar proposition that a unilateral claim of en-

titlement by the government can alter property rights. In *Monsanto*, however, we found merely that the Takings Clause was not violated by giving effect to the Government's announcement that application for "*the right to [the] valuable Government benefit*," *id.*, at 1007, 104 S.Ct., at 2875 (emphasis added), of obtaining registration of an insecticide would confer upon the Government a license to use and disclose the trade secrets contained in the application. *Id.*, at 1007-1008, 104 S.Ct., at 2875-2876. See also *Bowen v. Gilliard*, 483 U.S. 587, 605, 107 S.Ct. 3008, 3019, 97 L.Ed.2d 485 (1987). But the right to build on one's own property-even though its exercise can be subjected to legitimate permitting requirements-cannot remotely be described as a "governmental benefit." And thus the announcement that the application for (or granting of) the permit will entail the yielding of a property interest cannot be regarded as establishing the voluntary "exchange," 467 U.S., at 1007, 104 S.Ct., at 2875, that we found to have occurred in *Monsanto*. Nor are the Nollans' rights altered because they acquired the land well after the Commission had begun to implement its policy. So long as the Commission could not have deprived the prior owners of the easement without compensating them, the prior owners must be understood to have transferred their full property rights in conveying the lot.

834** Given, then, that requiring uncompensated conveyance of the easement outright would violate the Fourteenth Amendment, the question becomes whether requiring it to be conveyed as a condition for issuing a land-use permit alters the outcome. We have long recognized that land-use regulation does not effect a taking if it "substantially advance[s] legitimate state interests" and does not "den[y] an owner economically viable use of his land," *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980). See also *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 127, 98 S.Ct. 2646, 2660, 57 L.Ed.2d 631 (1978) ("[A] use restriction may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial government purpose"). Our cases have not elaborated on the standards for determining what constitutes a "legitimate state interest" or what type of connection between the regulation and the state interest satisfies the requirement that the former "substantially advance" the latter.[FN3] They have made clear, however, that a ***835** broad range of governmental purposes and regulations satisfies these requirements. See *Agins v. Tiburon*, *supra*, 447 U.S., at 260-262, 100 S.Ct., at 2141-2142 (scenic zoning); *Penn Central Transportation Co. v. New York City*, *supra* (landmark preservation); ****3148Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926) (residential zoning); Laitos & Westfall, Government Interference with Private Interests in Public Resources, 11 Harv.Envtl.L.Rev. 1, 66 (1987). The Commission argues that among these permissible purposes are protecting the public's ability to see the beach, assisting the public in overcoming the "psychological barrier" to using the beach created by a developed shorefront, and preventing congestion on the public beaches. We assume, without deciding, that this is so-in which case the Commission unquestionably would be able to deny the Nollans their permit outright if their new house (alone, or by reason of the cumulative impact produced in conjunction with other construction) [FN4] would substantially impede these purposes,***836** unless the denial would interfere so drastically with the Nollans' use of their property as to constitute a taking. See *Penn Central Transportation Co. v. New York City*, *supra*.

FN3. Contrary to Justice BRENNAN's claim, *post*, at 3150, our opinions do not establish that these standards are the same as those applied to due process or equal protection claims. To the contrary, our verbal formulations in the takings field have generally been quite different. We have required that the regulation "substantially advance" the "legitimate state interest" sought to be achieved, *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980), not that "the State '*could rationally have decided* ' that the measure adopted might achieve the State's objective." *Post*, at ----, quoting *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466, 101 S.Ct. 715, 725, 66 L.Ed.2d 659 (1981). Justice BRENNAN relies principally on an equal protection case, *Minnesota v. Clover Leaf Creamery Co.*, *supra*, and two substantive due process cases, *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-488, 75 S.Ct. 461, 464-465, 99 L.Ed. 563 (1955), and *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423,

72 S.Ct. 405, 407, 96 L.Ed. 469 (1952), in support of the standards he would adopt. But there is no reason to believe (and the language of our cases gives some reason to disbelieve) that so long as the regulation of property is at issue the standards for takings challenges, due process challenges, and equal protection challenges are identical; any more than there is any reason to believe that so long as the regulation of speech is at issue the standards for due process challenges, equal protection challenges, and First Amendment challenges are identical. *Goldblatt v. Hempstead*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962), does appear to assume that the inquiries are the same, but that assumption is inconsistent with the formulations of our later cases.

FN4. If the Nollans were being singled out to bear the burden of California's attempt to remedy these problems, although they had not contributed to it more than other coastal landowners, the State's action, even if otherwise valid, might violate either the incorporated Takings Clause or the Equal Protection Clause. One of the principal purposes of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960); see also *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621, 656, 101 S.Ct. 1287, 1306, 67 L.Ed.2d 551 (1981) (BRENNAN, J., dissenting); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 123, 98 S.Ct. 2646, 2658, 57 L.Ed.2d 631 (1978). But that is not the basis of the Nollans' challenge here.

The Commission argues that a permit condition that serves the same legitimate police-power purpose as a refusal to issue the permit should not be found to be a taking if the refusal to issue the permit would not constitute a taking. We agree. Thus, if the Commission attached to the permit some condition that would have protected the public's ability to see the beach notwithstanding construction of the new house-for example, a height limitation, a width restriction, or a ban on fences-so long as the Commission could have exercised its police power (as we have assumed it could) to forbid construction of the house altogether, imposition of the condition would also be constitutional. Moreover (and here we come closer to the facts of the present case), the condition would be constitutional even if it consisted of the requirement that the Nollans provide a viewing spot on their property for passersby with whose sighting of the ocean their new house would interfere. Although such a requirement, constituting a permanent grant of continuous access to the property, would have to be considered a taking if it were not attached to a development permit, the Commission's assumed power to forbid construction of the house in order to protect the public's view of the beach must surely include the power to condition construction upon some concession by the owner, even a concession of property rights, that serves the same end. If a prohibition designed to accomplish that purpose would be a legitimate exercise of the police power rather than a taking, it would be strange to conclude that providing the ***837** owner an alternative to that prohibition which accomplishes the same purpose is not.

The evident constitutional propriety disappears, however, if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition. When that essential nexus is eliminated, the situation becomes the same as if California law forbade shouting fire in a crowded theater, but granted dispensations to those willing to contribute $100 to the state treasury. While a ban on shouting fire can be a core exercise of the State's police power to protect the public safety, and can thus meet even our stringent standards for regulation of speech, adding the unrelated condition alters the purpose to one which, while it may be legitimate, is inadequate to sustain the ban. Therefore, even though, in a sense, requiring a $100 tax contribution in ****3149** order to shout fire is a lesser restriction on speech than an outright ban, it would not pass constitutional muster. Similarly here, the lack of nexus between the condition and the original purpose of the building restriction converts that purpose to something other than what it was. The purpose then becomes, quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation. Whatever may be the outer limits of "legitimate state interests" in the takings and land-use context, this is not one of them. In short, unless the permit condition serves the same governmental pur-

pose as the development ban, the building restriction is not a valid regulation of land use but "an out-and-out plan of extortion." *J.E.D. Associates, Inc. v. Atkinson*, 121 N.H. 581, 584, 432 A.2d 12, 14-15 (1981); see Brief for United States as *Amicus Curiae* 22, and n. 20. See also *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S., at 439, n. 17, 102 S.Ct., at 3178, n. 17.[FN5]

> FN5. One would expect that a regime in which this kind of leveraging of the police power is allowed would produce stringent land-use regulation which the State then waives to accomplish other purposes, leading to lesser realization of the land-use goals purportedly sought to be served than would result from more lenient (but nontradeable) development restrictions. Thus, the importance of the purpose underlying the prohibition not only does not *justify* the imposition of unrelated conditions for eliminating the prohibition, but positively militates against the practice.

***838** III

The Commission claims that it concedes as much, and that we may sustain the condition at issue here by finding that it is reasonably related to the public need or burden that the Nollans' new house creates or to which it contributes. We can accept, for purposes of discussion, the Commission's proposed test as to how close a "fit" between the condition and the burden is required, because we find that this case does not meet even the most untailored standards. The Commission's principal contention to the contrary essentially turns on a play on the word "access." The Nollans' new house, the Commission found, will interfere with "visual access" to the beach. That in turn (along with other shorefront development) will interfere with the desire of people who drive past the Nollans' house to use the beach, thus creating a "psychological barrier" to "access." The Nollans' new house will also, by a process not altogether clear from the Commission's opinion but presumably potent enough to more than offset the effects of the psychological barrier, increase the use of the public beaches, thus creating the need for more "access." These burdens on "access" would be alleviated by a requirement that the Nollans provide "lateral access" to the beach.

[2] Rewriting the argument to eliminate the play on words makes clear that there is nothing to it. It is quite impossible to understand how a requirement that people already on the public beaches be able to walk across the Nollans' property reduces any obstacles to viewing the beach created by the new house. It is also impossible to understand how it lowers any "psychological barrier" to using the public beaches, or how it helps to remedy any additional congestion on them ***839** caused by construction of the Nollans' new house. We therefore find that the Commission's imposition of the permit condition cannot be treated as an exercise of its land-use power for any of these purposes.[FN6] Our conclusion on this ****3150** point is consistent with the approach taken by every other court that has considered the question, with the exception of the California state courts. See *Parks v. Watson*, 716 F.2d 646, 651-653 (CA9 1983); *Bethlehem Evangelical Lutheran Church v. Lakewood*, 626 P.2d 668, 671-674 (Colo.1981); *Aunt Hack Ridge Estates, Inc. v. Planning Comm'n*, 160 Conn. 109, 117-120, 273 A.2d 880, 885 (1970); *Longboat Key v. Lands End, Ltd.*, 433 So.2d 574 (Fla.App.1983); *Pioneer Trust & Savings Bank v. Mount Prospect*, 22 Ill.2d 375, 380, 176 N.E.2d 799, 802 (1961); *Lampton v. Pinaire*, 610 S.W.2d 915, 918-919 (Ky.App.1980); *Schwing v. Baton Rouge*, 249 So.2d 304 (La.App.), application denied, 259 La. 770, 252 So.2d 667 (1971); *Howard County v. JJM, Inc.*, 301 Md. 256, 280-282, 482 A.2d 908, 920-921 (1984); *Collis v. Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (1976); *State ex rel. Noland v. St. Louis County*, 478 S.W.2d 363 (Mo.1972); ***840** *Billings Properties, Inc. v. Yellowstone County*, 144 Mont. 25, 33-36, 394 P.2d 182, 187-188 (1964); *Simpson v. North Platte*, 206 Neb. 240, 292 N.W.2d 297 (1980); *Briar West, Inc. v. Lincoln*, 206 Neb. 172, 291 N.W.2d 730 (1980); *J.E.D. Associates v. Atkinson*, 121 N.H. 581, 432 A.2d 12 (1981); *Longridge Builders, Inc. v. Planning Bd. of Princeton*, 52 N.J. 348, 350-351, 245 A.2d 336, 337-338 (1968); *Jenad, Inc. v. Scarsdale*, 18 N.Y.2d 78, 271 N.Y.S.2d 955, 218 N.E.2d 673 (1966); *MacKall v. White*, 85 App.Div.2d 696, 445 N.Y.S.2d 486 (1981), appeal denied, 56 N.Y.2d 503, 450 N.Y.S.2d 1025, 435 N.E.2d 1100 (1982); *Frank Ansuini, Inc. v. Cranston*, 107 R.I. 63, 68-69, 71, 264 A.2d 910, 913, 914 (1970); *College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 807 (Tex.1984); *Call v. West Jordan*, 614 P.2d 1257, 1258-1259 (Utah 1980); *Board of Supervisors of James City County v. Rowe*, 216 Va. 128, 136-139, 216 S.E.2d 199, 207-209 (1975); *Jordan v. Menomonee Falls*, 28 Wis.2d 608, 617-618, 137 N.W.2d 442, 447-449 (1965), appeal dism'd, 385 U.S. 4, 87

S.Ct. 36, 17 L.Ed.2d 3 (1966). See also *Littlefield v. Afton*, 785 F.2d 596, 607 (CA8 1986); Brief for National Association of Home Builders et al. as *Amici Curiae* 9-16.

> FN6. As Justice BRENNAN notes, the Commission also argued that the construction of the new house would " 'increase private use immediately adjacent to public tidelands,' " which in turn might result in more disputes between the Nollans and the public as to the location of the boundary. *Post*, at 3155, quoting App. 62. That risk of boundary disputes, however, is inherent in the right to exclude others from one's property, and the construction here can no more justify mandatory dedication of a sort of "buffer zone" in order to avoid boundary disputes than can the construction of an addition to a single-family house near a public street. Moreover, a buffer zone has a boundary as well, and unless that zone is a "no-man's land" that is off limits for both neighbors (which is of course not the case here) its creation achieves nothing except to shift the location of the boundary dispute further on to the private owner's land. It is true that in the distinctive situation of the Nollans' property the seawall could be established as a clear demarcation of the public easement. But since not all of the lands to which this land-use condition applies have such a convenient reference point, the avoidance of boundary disputes is, even more obviously than the others, a made-up purpose of the regulation.

Justice BRENNAN argues that imposition of the access requirement is not irrational. In his version of the Commission's argument, the reason for the requirement is that in its absence, a person looking toward the beach from the road will see a street of residential structures including the Nollans' new home and conclude that there is no public beach nearby. If, however, that person sees people passing and repassing along the dry sand behind the Nollans' home, he will realize that there is a public beach somewhere in the vicinity. *Post*, at 3154-3155. The Commission's action, however, was based on the opposite factual finding that the wall of houses completely blocked the view of the beach and that a person looking from the road would not be able to see it at all. App. 57-59.

Even if the Commission had made the finding that Justice BRENNAN proposes, however, it is not certain that it would ***841** suffice. We do not share Justice BRENNAN's confidence that the Commission "should have little difficulty in the future in utilizing its expertise to demonstrate a specific connection between provisions for access and burdens on access," *post*, at 3161, that will avoid the effect of today's decision. We view the Fifth Amendment's Property Clause to be more than a pleading requirement, and compliance with it to be more than an exercise in cleverness and imagination. As indicated earlier, our cases describe the condition for abridgement of property rights through the police power as a "*substantial* advanc[ing]" of a ****3151** legitimate state interest. We are inclined to be particularly careful about the adjective where the actual conveyance of property is made a condition to the lifting of a land-use restriction, since in that context there is heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated police-power objective.

We are left, then, with the Commission's justification for the access requirement unrelated to land-use regulation:

> "Finally, the Commission notes that there are several existing provisions of pass and repass lateral access benefits already given by past Faria Beach Tract applicants as a result of prior coastal permit decisions. The access required as a condition of this permit is part of a comprehensive program to provide continuous public access along Faria Beach as the lots undergo development or redevelopment." App. 68.

That is simply an expression of the Commission's belief that the public interest will be served by a continuous strip of publicly accessible beach along the coast. The Commission may well be right that it is a good idea, but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization. Rather, California is free to advance its "comprehensive program," if it wishes, by using its power of eminent domain for this "public purpose," ***842** see U.S. Const., Amdt. 5; but if it wants an easement across the Nollans' property, it must pay for it.

Reversed.

Justice BRENNAN, with whom Justice MARSHALL joins, dissenting.

Appellants in this case sought to construct a new dwelling on their beach lot that would both diminish visual access to the beach and move private development closer to the public tidelands. The Commission reasonably concluded that such "buildout," both individually and cumulatively, threatens public access to the shore. It sought to offset this encroachment by obtaining assurance that the public may walk along the shoreline in order to gain access to the ocean. The Court finds this an illegitimate exercise of the police power, because it maintains that there is no reasonable relationship between the effect of the development and the condition imposed.

The first problem with this conclusion is that the Court imposes a standard of precision for the exercise of a State's police power that has been discredited for the better part of this century. Furthermore, even under the Court's cramped standard, the permit condition imposed in this case directly responds to the specific type of burden on access created by appellants' development. Finally, a review of those factors deemed most significant in takings analysis makes clear that the Commission's action implicates none of the concerns underlying the Takings Clause. The Court has thus struck down the Commission's reasonable effort to respond to intensified development along the California coast, on behalf of landowners who can make no claim that their reasonable expectations have been disrupted. The Court has, in short, given appellants a windfall at the expense of the public.

I

The Court's conclusion that the permit condition imposed on appellants is unreasonable cannot withstand analysis. First, the Court demands a degree of exactitude that is inconsistent***843** with our standard for reviewing the rationality of a State's exercise of its police power for the welfare of its citizens. Second, even if the nature of the public-access condition imposed must be identical to the precise burden on access created by appellants, this requirement is plainly satisfied.

A

There can be no dispute that the police power of the States encompasses the authority to impose conditions on private development.****3152** See, *e.g.*, *Agins v. Tiburon*, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978); *Gorieb v. Fox*, 274 U.S. 603, 47 S.Ct. 675, 71 L.Ed. 1228 (1927). It is also by now commonplace that this Court's review of the rationality of a State's exercise of its police power demands only that the State "*could rationally have decided* " that the measure adopted might achieve the State's objective. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466, 101 S.Ct. 715, 725, 66 L.Ed.2d 659 (1981) (emphasis in original). [FN1] In this case, California has ***844** employed its police power in order to condition development upon preservation of public access to the ocean and tidelands. The Coastal Commission, if it had so chosen, could have denied***845** the Nollans' request for a development****3153** permit, since the property would have remained economically viable without the requested new development.[FN2] Instead, the State sought to accommodate the Nollans' desire for new development, on the condition that the development not diminish the overall amount of public access to the coastline. Appellants' proposed development would reduce public access by restricting visual access to the beach, by contributing to an increased need for community facilities, and by moving private development closer to public beach property. The Commission sought to offset this diminution in access, and thereby preserve the overall balance of access, by requesting a deed restriction that would ensure "lateral" access: the right of the public to pass and repass along the dry sand parallel to the shoreline in order to reach the tidelands and the ocean. In the expert opinion of the Coastal Commission, development conditioned on such a restriction would fairly attend to both public and private interests.

FN1. See also *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-488, 75 S.Ct. 461, 464-465, 99 L.Ed. 563 (1955) ("[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it"); *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423, 72 S.Ct. 405, 407, 96 L.Ed. 469 (1952) ("Our recent decisions make it plain that we do not sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses

offends the public welfare.... [S]tate legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare").

Notwithstanding the suggestion otherwise, *ante*, at ----, n. 3, our standard for reviewing the threshold question whether an exercise of the police power is legitimate is a uniform one. As we stated over 25 years ago in addressing a takings challenge to government regulation:

"The term 'police power' connotes the time-tested conceptional limit of public encroachment upon private interests. Except for the substitution of the familiar standard of 'reasonableness,' this Court has generally refrained from announcing any specific criteria. The classic statement of the rule in *Lawton v. Steele*, 152 U.S. 133, 137 [14 S.Ct. 499, 501, 38 L.Ed. 385] (1894), is still valid today: ... '[I]t must appear, first, that the interests of the public ... require [government] interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.' Even this rule is not applied with strict precision, for this Court has often said that 'debatable questions as to reasonableness are not for the courts but for the legislature ....' *E.g.*, *Sproles v. Binford*, 286 U.S. 374, 388 [52 S.Ct. 581, 585, 76 L.Ed. 1167] (1932)." *Goldblatt v. Hempstead*, 369 U.S. 590, 594-595, 82 S.Ct. 987, 990-991, 8 L.Ed.2d 130 (1962).

See also *id.*, at 596, 82 S.Ct. at 991 (upholding regulation from takings challenge with citation to, *inter alia*, *United States v. Carolene Products Co.*, 304 U.S. 144, 154, 58 S.Ct. 778, 784, 82 L.Ed. 1234 (1938), for proposition that exercise of police power will be upheld "if any state of facts either known or which could be reasonably assumed affords support for it"). In *Connolly v. Pension Benefit Guaranty Corporation*, 475 U.S. 211, 106 S.Ct. 1018, 89 L.Ed.2d 166 (1986), for instance, we reviewed a takings challenge to statutory provisions that had been held to be a legitimate exercise of the police power under due process analysis in *Pension Benefit Guaranty Corporation v. R.A. Gray & Co.*, 467 U.S. 717, 104 S.Ct. 2709, 81 L.Ed.2d 601 (1984). *Gray*, in turn, had relied on *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S.Ct. 2882, 49 L.Ed.2d 752 (1976). In rejecting the takings argument that the provisions were not within Congress' regulatory power, the Court in *Connolly* stated: "Although both *Gray* and *Turner Elkhorn* were due process cases, it would be surprising indeed to discover now that in both cases Congress unconstitutionally had taken the assets of the employers there involved." 475 U.S., at 223, 106 S.Ct., at 1025. Our phraseology may differ slightly from case to case-*e.g.*, regulation must "substantially advance," *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980), or be "reasonably necessary to," *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 127, 98 S.Ct. 2646, 2660, 57 L.Ed.2d 631 (1978), the government's end. These minor differences cannot, however, obscure the fact that the inquiry in each case is the same.

Of course, government action may be a valid exercise of the police power and still violate specific provisions of the Constitution. Justice SCALIA is certainly correct in observing that challenges founded upon these provisions are reviewed under different standards. *Ante*, at ----. Our consideration of factors such as those identified in *Penn Central*, *supra*, for instance, provides an analytical framework for protecting the values underlying the Takings Clause, and other distinctive approaches are utilized to give effect to other constitutional provisions. This is far different, however, from the use of different standards of review to address the threshold issue of the rationality of government action.

FN2. As this Court declared in *United States v. Riverside Bayview Homes, Inc.*, 474 U.S.

121, 127, 106 S.Ct. 455, 459, 88 L.Ed.2d 419 (1985):

> "A requirement that a person obtain a permit before engaging in a certain use of his or her property does not itself 'take' the property in any sense: after all, the very existence of a permit system implies that permission may be granted, leaving the landowner free to use the property as desired. Moreover, even if the permit is denied, there may be other viable uses available to the owner. Only when a permit is denied and the effect of the denial is to prevent 'economically viable' use of the land in question can it be said that a taking has occurred."

We also stated in *Kaiser Aetna v. United States*, 444 U.S. 164, 179, 100 S.Ct. 383, 392, 62 L.Ed.2d 332 (1979), with respect to dredging to create a private marina:

> "We have not the slightest doubt that the Government could have refused to allow such dredging on the ground that it would have impaired navigation in the bay, or could have conditioned its approval of the dredging on petitioners' agreement to comply with various measures that it deemed appropriate for the promotion of navigation."

The Court finds fault with this measure because it regards the condition as insufficiently tailored to address the precise ***846** type of reduction in access produced by the new development. The Nollans' development blocks visual access, the Court tells us, while the Commission seeks to preserve lateral access along the coastline. Thus, it concludes, the State acted irrationally. Such a narrow conception of rationality, however, has long since been discredited as a judicial arrogation of legislative authority. "To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government." *Sproles v. Binford*, 286 U.S. 374, 388, 52 S.Ct. 581, 585, 76 L.Ed. 1167 (1932). Cf. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 491, n. 21, 107 S.Ct. 1232, 1245, n. 21, 94 L.Ed.2d 472 (1987) ("The Takings Clause has never been read to require the States or the courts to calculate whether a specific individual has suffered burdens ... in excess of the benefits received"). As this Court long ago declared with regard to various forms of restriction on the use of property:

> "Each interferes in the same way, if not to the same extent, with the owner's general right of dominion over his property. All rest for their justification upon the same reasons which have arisen in recent times as a result of the great increase and concentration of population in urban communities and the vast changes in the extent and complexity of the problems of modern city life. State legislatures and city councils, who deal with the situation from a practical standpoint, are better qualified than the courts to determine the necessity, character, and degree of regulation which these new and perplexing conditions require; and their conclusions should not be disturbed by the courts unless clearly arbitrary and unreasonable." *Gorieb*, 274 U.S., at 608, 47 S.Ct., at 677 (citations omitted).

****3154** The Commission is charged by both the State Constitution and legislature to preserve overall public access to the California coastline. Furthermore, by virtue of its participation in the Coastal Zone Management Act (CZMA) program, the ***847** State must "exercise effectively [its] responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone," 16 U.S.C. § 1452(2), so as to provide for, *inter alia*, "public access to the coas[t] for recreation purposes." § 1452(2)(D). The Commission has sought to discharge its responsibilities in a flexible manner. It has sought to balance private and public interests and to accept tradeoffs: to permit development that reduces access in some ways as long as other means of access are enhanced. In this case, it has determined that the Nollans' burden on access would be offset by a deed restriction that formalizes the public's right to pass along the shore. In its informed judgment, such a tradeoff would preserve the net amount of public access to the coastline. The Court's insistence on a precise fit between the forms of burden and condition on each individual parcel along the California coast would penalize the Commission for its flexibility, hampering the ability to fulfill its public trust mandate.

The Court's demand for this precise fit is based on

the assumption that private landowners in this case possess a reasonable expectation regarding the use of their land that the public has attempted to disrupt. In fact, the situation is precisely the reverse: it is private landowners who are the interlopers. The public's expectation of access considerably antedates any private development on the coast. Article X, § 4, of the California Constitution, adopted in 1879, declares:

> "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so ***848** that access to the navigable waters of this State shall always be attainable for the people thereof."

It is therefore private landowners who threaten the disruption of settled public expectations. Where a private landowner has had a reasonable expectation that his or her property will be used for exclusively private purposes, the disruption of this expectation dictates that the government pay if it wishes the property to be used for a public purpose. In this case, however, the State has sought to protect *public* expectations of access from disruption by private land use. The State's exercise of its police power for this purpose deserves no less deference than any other measure designed to further the welfare of state citizens.

Congress expressly stated in passing the CZMA that "[i]n light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate." 16 U.S.C. § 1451(h). It is thus puzzling that the Court characterizes as a "non-land-use justification," *ante*, at ----, the exercise of the police power to " 'provide continuous public access along Faria Beach as the lots undergo development or redevelopment.' " *Ibid.* (quoting App. 68). The Commission's determination that certain types of development jeopardize public access to the ocean, and that such development should be conditioned on preservation of access, is the essence of responsible land-use planning. The Court's use of an unreasonably demanding standard for determining the rationality of state regulation in this area thus could hamper innovative efforts to ****3155** preserve an increasingly fragile national resource. [FN3]

> FN3. The list of cases cited by the Court as support for its approach, *ante*, at ----, includes no instance in which the State sought to vindicate pre-existing rights of access to navigable water, and consists principally of cases involving a requirement of the dedication of land as a condition of subdivision approval. Dedication, of course, requires the surrender of ownership of property rather than, as in this case, a mere restriction on its use. The only case pertaining to beach access among those cited by the Court is *MacKall v. White*, 85 App.Div.2d 696, 445 N.Y.S.2d 486 (1981). In that case, the court found that a subdivision application could not be conditioned upon a declaration that the landowner would not hinder the public from using a trail that had been used to gain access to a bay. The trail had been used despite posted warnings prohibiting passage, and despite the owner's resistance to such use. In that case, unlike this one, neither the State Constitution, state statute, administrative practice, nor the conduct of the landowner operated to create any reasonable expectation of a right of public access.

***849** B

Even if we accept the Court's unusual demand for a precise match between the condition imposed and the specific type of burden on access created by the appellants, the State's action easily satisfies this requirement. First, the lateral access condition serves to dissipate the impression that the beach that lies behind the wall of homes along the shore is for private use only. It requires no exceptional imaginative powers to find plausible the Commission's point that the average person passing along the road in front of a phalanx of imposing permanent residences, including the appellants' new home, is likely to conclude that this particular portion of the shore is not open to the public. If, however, that person can see that numerous people are passing and repassing along the dry sand, this conveys the message that the beach is in fact open for use by the public. Furthermore, those persons who go down to the public beach a quarter-mile away will be able to

look down the coastline and see that persons have continuous access to the tidelands, and will observe signs that proclaim the public's right of access over the dry sand. The burden produced by the diminution in visual access-the impression that the beach is not open to the public-is thus directly alleviated by the provision for public access over the dry sand. The Court therefore has an ***850** unrealistically limited conception of what measures could reasonably be chosen to mitigate the burden produced by a diminution of visual access.

The second flaw in the Court's analysis of the fit between burden and exaction is more fundamental. The Court assumes that the only burden with which the Coastal Commission was concerned was blockage of visual access to the beach. This is incorrect.[FN4] The Commission specifically stated in its report in support of the permit condition that "[t]he Commission finds that the applicants' proposed development would present an increase in view blockage, *an increase in private use of the shorefront,* and that this impact would burden the public's ability to traverse to and along the shorefront." App. 65-66 (emphasis added). It declared that the possibility that "the public may get the impression that the beachfront is no longer available for public use" would be "due to *the encroaching nature of private use immediately adjacent to the public use, as well as* the visual 'block' of increased residential build-out impacting the visual quality of the beachfront." *Id.,* at 59 (emphasis added).

> FN4. This may be because the State in its briefs and at argument contended merely that the permit condition would serve to preserve overall public access, by offsetting the diminution in access resulting from the project, such as, *inter alia,* blocking the public's view of the beach. The State's position no doubt reflected the reasonable assumption that the Court would evaluate the rationality of its exercise of the police power in accordance with the traditional standard of review, and that the Court would not attempt to substitute its judgment about the best way to preserve overall public access to the ocean at the Faria Family Beach Tract.

The record prepared by the Commission is replete with references to the threat to ****3156** public access along the coastline resulting from the seaward encroachment of private development along a beach whose mean high-tide line is constantly shifting. As the Commission observed in its report: "The Faria Beach shoreline fluctuates during the year depending on the seasons and accompanying storms, and the public is not always able to traverse the shoreline below the mean ***851** high tide line." *Id.,* at 67. As a result, the boundary between publicly owned tidelands and privately owned beach is not a stable one, and "[t]he existing seawall is located very near to the mean high water line." *Id.,* at 61. When the beach is at its largest, the seawall is about 10 feet from the mean high-tide mark; "[d]uring the period of the year when the beach suffers erosion, the mean high water line appears to be located either on or beyond the existing seawall." *Ibid.* Expansion of private development on appellants' lot toward the seawall would thus "increase private use immediately adjacent to public tidelands, which has the potential of causing adverse impacts on the public's ability to traverse the shoreline." *Id.,* at 62. As the Commission explained:

> "The placement of more private use adjacent to public tidelands has the potential of creating use conflicts between the applicants and the public. The results of new private use encroachment into boundary/buffer areas between private and public property can create situations in which landowners intimidate the public and seek to prevent them from using public tidelands because of disputes between the two parties over where the exact boundary between private and public ownership is located. If the applicants' project would result in further seaward encroachment of private use into an area of clouded title, new private use in the subject encroachment area could result in use conflict between private and public entities on the subject shorefront." *Id.,* at 61-62.

The deed restriction on which permit approval was conditioned would directly address this threat to the public's access to the tidelands. It would provide a formal declaration of the public's right of access, thereby ensuring that the shifting character of the tidelands, and the presence of private development immediately adjacent to it, would not jeopardize***852** enjoyment of that right.[FN5] The imposition of the permit condition was therefore directly related to the fact that appellants development would be "located along a unique stretch of coast where lateral public access is inadequate due to the construction of private residen-

tial structures and shoreline protective devices along a fluctuating shoreline." *Id.*, at 68. The deed restriction was crafted to deal with the particular character of the beach along which appellants sought to build, and with the specific problems created by expansion of development toward the public tidelands. In imposing the restriction, the State sought to ensure that such development would not disrupt the historical expectation of the public regarding access to the sea.[FN6]

FN5. As the Commission's Public Access (Shoreline) Interpretative Guidelines state:

> "[T]he provision of lateral access recognizes the potential for conflicts between public and private use and creates a type of access that allows the public to move freely along all the tidelands in an area that can be clearly delineated and distinguished from private use areas.... Thus the 'need' determination set forth in P[ublic] R[esources] C[ode] 30212(a)(2) should be measured in terms of providing access that buffers public access to the tidelands from the burdens generated on access by private development." App. 358-359.

FN6. The Court suggests that the risk of boundary disputes "is inherent in the right to exclude others from one's property," and thus cannot serve as a purpose to support the permit condition. *Ante*, at 3149, n. 6. The Commission sought the deed restriction, however, not to address a generalized problem inherent in any system of property, but to address the *particular* problem created by the shifting high-tide line along Faria Beach. Unlike the typical area in which a boundary is delineated reasonably clearly, the very problem on Faria Beach is that the boundary is *not* constant. The area open to public use therefore is frequently in question, and, as the discussion, *supra*, demonstrates, the Commission clearly tailored its permit condition precisely to address this specific problem.

> The Court acknowledges that the Nollans' seawall could provide "a clear demarcation of the public easement," and thus avoid merely shifting "the location of the boundary dispute further on to the private owner's land." *Ante*, at ----, n. 6. It nonetheless faults the Commission because every property subject to regulation may not have this feature. This case, however, is a challenge to the permit condition *as applied to the Nollans' property*, so the presence or absence of seawalls on other property is irrelevant.

***853 **3157** The Court is therefore simply wrong that there is no reasonable relationship between the permit condition and the specific type of burden on public access created by the appellants' proposed development. Even were the Court desirous of assuming the added responsibility of closely monitoring the regulation of development along the California coast, this record reveals rational public action by any conceivable standard.

II

The fact that the Commission's action is a legitimate exercise of the police power does not, of course, insulate it from a takings challenge, for when "regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 322 (1922). Conventional takings analysis underscores the implausibility of the Court's holding, for it demonstrates that this exercise of California's police power implicates none of the concerns that underlie our takings jurisprudence.

In reviewing a Takings Clause claim, we have regarded as particularly significant the nature of the governmental action and the economic impact of regulation, especially the extent to which regulation interferes with investment-backed expectations. *Penn Central*, 438 U.S., at 124, 98 S.Ct., at 2659. The character of the government action in this case is the imposition of a condition on permit approval, which allows the public to continue to have access to the coast. The physical intrusion permitted by the deed restriction is minimal. The public is permitted the right to pass and repass along the coast in an area from the seawall to the mean high-tide mark. App. 46. This area is at its *widest* 10 feet, *id.*, at 61, which means that *even without the permit condition*, the public's right of access permits it to pass on average within a few feet of the seawall. Passage closer to the 8-foot-high rocky seawall will make the ***854** appellants even less visible to the public than passage along the high-tide area

farther out on the beach. The intrusiveness of such passage is even less than the intrusion resulting from the required dedication of a sidewalk in front of private residences, exactions which are commonplace conditions on approval of development.[FN7] Furthermore, the high-tide line shifts throughout the year, moving up to and beyond the seawall, so that public passage for a portion of the year would either be impossible or would not occur on appellant's property. Finally, although the Commission had the authority to provide for either passive or active recreational use of the property, it chose the least intrusive alternative: a mere right to pass and repass. *Id.*, at 370. [FN8] ****3158** As this Court made ***855** clear in *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 83, 100 S.Ct. 2035, 2042, 64 L.Ed.2d 741 (1980), physical access to private property in itself creates no takings problem if it does not "unreasonably impair the value or use of [the] property." Appellants can make no tenable claim that either their enjoyment of their property or its value is diminished by the public's ability merely to pass and repass a few feet closer to the seawall beyond which appellants' house is located.

FN7. See, *e.g.*, *Bellefontaine Neighbors v. J.J. Kelley Realty & Bldg. Co.*, 460 S.W.2d 298 (Mo.Ct.App.1970); *Allen v. Stockwell*, 210 Mich. 488, 178 N.W. 27 (1920). See generally Shultz & Kelley, Subdivision Improvement Requirements and Guarantees: A Primer, 28 Wash.U.J.Urban and Contemp.L. 3 (1985).

FN8. The Commission acted in accordance with its Guidelines both in determining the width of the area of passage, and in prohibiting any recreational use of the property. The Guidelines state that it may be necessary on occasion to provide for less than the normal 25-foot-wide accessway along the dry sand when this may be necessary to "protect the privacy rights of adjacent property owners." App. 363. They also provide this advice in selecting the type of public use that may be permitted:

> "*Pass and Repass*. Where topographic constraints of the site make use of the beach dangerous, where habitat values of the shoreline would be adversely impacted by public use of the shoreline or where the accessway may encroach closer than 20 feet to a residential structure, the accessway may be limited to the right of the public to pass and repass along the access area. For the purposes of these guidelines, pass and repass is defined as the right to walk and run along the shoreline. This would provide for public access along the shoreline but would not allow for any additional use of the accessway. Because this severely limits the public's ability to enjoy the adjacent state owned tidelands by restricting the potential use of the access areas, this form of access dedication should be used only where necessary to protect the habitat values of the site, where topographic constraints warrant the restriction, or where it is necessary to protect the privacy of the landowner." *Id.*, at 370.

PruneYard is also relevant in that we acknowledged in that case that public access rested upon a "state constitutional ... provision that had been construed to create rights to the use of private property by strangers." *Id.*, at 81, 100 S.Ct., at 2041. In this case, of course, the State is also acting to protect a state constitutional right. See *supra*, at ---- (quoting Art. X, § 4, of California Constitution). The constitutional provision guaranteeing public access to the ocean states that "the Legislature shall enact such laws as will give *the most liberal construction to this provision* so that access to the navigable waters of this State shall be always attainable for the people thereof." Cal. Const., Art. X, § 4 (emphasis added). This provision is the explicit basis for the statutory directive to provide for public access along the coast in new development projects, Cal.Pub.Res.Code Ann. § 30212 (West 1986), and has been construed by the state judiciary to permit passage over private land where necessary to gain access to the tidelands. *Grupe v. California Coastal Comm'n*, 166 Cal.App.3d 148, 171-172, 212 Cal.Rptr. 578, 592-593 (1985). The physical access to the perimeter of appellants' property at issue in this case thus results directly from the State's enforcement of the State Constitution.

Finally, the character of the regulation in this case is not unilateral government action, but a condition on approval of a development request submitted by appellants. The State has not sought to interfere with any pre-existing property interest, but has responded to

appellants' proposal to intensify development on the coast. Appellants themselves chose to ***856** submit a new development application, and could claim no property interest in its approval. They were aware that approval of such development would be conditioned on preservation of adequate public access to the ocean. The State has initiated no action against appellants' property; had the Nollans' not proposed more intensive development in the coastal zone, they would never have been subject to the provision that they challenge.

Examination of the economic impact of the Commission's action reinforces the conclusion that no taking has occurred. Allowing appellants to intensify development along the coast in exchange for ensuring public access to the ocean is a classic instance of government action that produces a "reciprocity of advantage." *Pennsylvania Coal*, 260 U.S., at 415, 43 S.Ct., at 160. Appellants have been allowed to replace a one-story, 521-square-foot beach home with a two-story, 1,674-square-foot residence and an attached two-car garage, resulting in development covering 2,464 square feet of the lot. Such development obviously significantly increases the value of appellants' property; appellants make no contention that this increase is offset by any diminution in value resulting from the deed restriction, much less that the restriction made the property less valuable than it would have been without the new construction. Furthermore, appellants gain an additional benefit from the Commission's permit****3159** condition program. They are able to walk along the beach beyond the confines of their own property only because the Commission has required deed restrictions as a condition of approving other new beach developments.[FN9] Thus, appellants benefit both as private landowners and as members of the public from the fact that new development permit requests are conditioned on preservation of public access.

> FN9. At the time of the Nollans' permit application, 43 of the permit requests for development along the Faria Beach had been conditioned on deed restrictions ensuring lateral public access along the shoreline. App. 48.

***857** Ultimately, appellants' claim of economic injury is flawed because it rests on the assumption of entitlement to the full value of their new development. Appellants submitted a proposal for more intensive development of the coast, which the Commission was under no obligation to approve, and now argue that a regulation designed to ameliorate the impact of that development deprives them of the full value of their improvements. Even if this novel claim were somehow cognizable, it is not significant. "[T]he interest in anticipated gains has traditionally been viewed as less compelling than other property-related interests." *Andrus v. Allard*, 444 U.S. 51, 66, 100 S.Ct. 318, 327, 62 L.Ed.2d 210 (1979).

With respect to appellants' investment-backed expectations, appellants can make no reasonable claim to any expectation of being able to exclude members of the public from crossing the edge of their property to gain access to the ocean. It is axiomatic, of course, that state law is the source of those strands that constitute a property owner's bundle of property rights. "[A]s a general proposition[,] the law of real property is, under our Constitution, left to the individual States to develop and administer." *Hughes v. Washington*, 389 U.S. 290, 295, 88 S.Ct. 438, 441, 19 L.Ed.2d 530 (1967) (Stewart, J., concurring). See also *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10, 22, 56 S.Ct. 23, 29, 80 L.Ed. 9 (1935) ("Rights and interests in the tideland, which is subject to the sovereignty of the State, are matters of local law"). In this case, the State Constitution explicitly states that no one possessing the "frontage" of any "navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose." Cal. Const., Art. X, § 4. The state Code expressly provides that, save for exceptions not relevant here, "[p]ublic access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects." Cal.Pub.Res.Code Ann. § 30212 (West 1986). The Coastal Commission Interpretative Guidelines make clear that fulfillment of the Commission's constitutional and statutory duty ***858** requires that approval of new coastline development be conditioned upon provisions ensuring lateral public access to the ocean. App. 362. At the time of appellants' permit request, the Commission had conditioned all 43 of the proposals for coastal new development in the Faria Family Beach Tract on the provision of deed restrictions ensuring lateral access along the shore. *Id.*, at 48. Finally, the Faria family had leased the beach property since the early part of this century, and "the Faria family and their lessees [including the Nollans] had not interfered with public use of the beachfront within

the Tract, so long as public use was limited to pass and re-pass lateral access along the shore." *Ibid.* California therefore has clearly established that the power of exclusion for which appellants seek compensation simply is not a strand in the bundle of appellants' property rights, and appellants have never acted as if it were. Given this state of affairs, appellants cannot claim that the deed restriction has deprived them of a reasonable expectation to exclude from their property persons desiring to gain access to the sea.

Even were we somehow to concede a pre-existing expectation of a right to exclude, appellants were clearly on notice ****3160** when requesting a new development permit that a condition of approval would be a provision ensuring public lateral access to the shore. Thus, they surely could have had no expectation that they could obtain approval of their new development and exercise any right of exclusion afterward. In this respect, this case is quite similar to *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984). In *Monsanto,* the respondent had submitted trade data to the Environmental Protection Agency (EPA) for the purpose of obtaining registration of certain pesticides. The company claimed that the agency's disclosure of certain data in accordance with the relevant regulatory statute constituted a taking. The Court conceded that the data in question constituted property under state law. It also found, however, that certain of the data had been submitted to the agency after Congress had ***859** made clear that only limited confidentiality would be given data submitted for registration purposes. The Court observed that the statute served to inform Monsanto of the various conditions under which data might be released, and stated:

> "If, despite the data-consideration and data-disclosure provisions in the statute, Monsanto chose to submit the requisite data in order to receive a registration, it can hardly argue that its reasonable investment-backed expectations are disturbed when EPA acts to use or disclose the data in a manner that was authorized by law at the time of the submission." *Id.*, at 1006-1007, 104 S.Ct., at 2874-2875.

The Court rejected respondent's argument that the requirement that it relinquish some confidentiality imposed an unconstitutional condition on receipt of a Government benefit:

> "[A]s long as Monsanto is aware of the conditions under which the data are submitted, and the conditions are rationally related to a legitimate Government interest, a voluntary submission of data by an applicant in exchange for the economic advantages of a registration can hardly be called a taking." *Id.*, at 1007, 104 S.Ct., at 2875.

The similarity of this case to *Monsanto* is obvious. Appellants were aware that stringent regulation of development along the California coast had been in place at least since 1976. The specific deed restriction to which the Commission sought to subject them had been imposed since 1979 on all 43 shoreline new development projects in the Faria Family Beach Tract. App. 48. Such regulation to ensure public access to the ocean had been directly authorized by California citizens in 1972, and reflected their judgment that restrictions on coastal development represented " 'the advantage of living and doing business in a civilized community.' " *Andrus v. Allard, supra,* 444 U.S., at 67, 100 S.Ct., at 328, quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S., at 422, 43 S.Ct., at 163 (Brandeis, J., dissenting). The deed restriction was "authorized by law at the ***860** time of [appellants' permit] submission," *Monsanto, supra,* 467 U.S., at 1007, 104 S.Ct., at 2875, and, as earlier analysis demonstrates, *supra,* at ----, was reasonably related to the objective of ensuring public access. Appellants thus were on notice that new developments would be approved only if provisions were made for lateral beach access. In requesting a new development permit from the Commission, they could have no reasonable expectation of, and had no entitlement to, approval of their permit application without any deed restriction ensuring public access to the ocean. As a result, analysis of appellants' investment-backed expectations reveals that "the force of this factor is so overwhelming ... that it disposes of the taking question." *Monsanto, supra,* at 1005, 104 S.Ct., at 2874.[FN10]

> FN10. The Court suggests that *Ruckelshaus v. Monsanto* is distinguishable, because government regulation of property in that case was a condition on receipt of a "government benefit," while here regulation takes the form of a restriction on "the right to build on one's own property," which "cannot remotely be described as a 'government benefit.' " *Ante,* at 3152, n. 2. This proffered distinction is not persuasive. Both Monsanto and the Nollans hold property whose use is

> subject to regulation; Monsanto may not sell its property without obtaining government approval and the Nollans may not build new development on their property without government approval. Obtaining such approval is as much a "government benefit" for the Nollans as it is for Monsanto. If the Court is somehow suggesting that "the right to build on one's own property" has some privileged natural rights status, the argument is a curious one. By any traditional labor theory of value justification for property rights, for instance, see, *e.g.*, J. Locke, The Second Treatise of Civil Government 15-26 (E. Gough, ed. 1947), Monsanto would have a superior claim, for the chemical formulae which constitute its property only came into being by virtue of Monsanto's efforts.

****3161** Standard Takings Clause analysis thus indicates that the Court employs its unduly restrictive standard of police power rationality to find a taking where neither the character of governmental action nor the nature of the private interest affected raise any takings concern. The result is that the Court invalidates regulation that represents a reasonable adjustment***861** of the burdens and benefits of development along the California coast.

III

The foregoing analysis makes clear that the State has taken no property from appellants. Imposition of the permit condition in this case represents the State's reasonable exercise of its police power. The Coastal Commission has drawn on its expertise to preserve the balance between private development and public access, by requiring that any project that intensifies development on the increasingly crowded California coast must be offset by gains in public access. Under the normal standard for review of the police power, this provision is eminently reasonable. Even accepting the Court's novel insistence on a precise *quid pro quo* of burdens and benefits, there is a reasonable relationship between the public benefit and the burden created by appellants' development. The movement of development closer to the ocean creates the prospect of encroachment on public tidelands, because of fluctuation in the mean high-tide line. The deed restriction ensures that disputes about the boundary between private and public property will not deter the public from exercising its right to have access to the sea.

Furthermore, consideration of the Commission's action under traditional takings analysis underscores the absence of any viable takings claim. The deed restriction permits the public only to pass and repass along a narrow strip of beach, a few feet closer to a seawall at the periphery of appellants' property. Appellants almost surely have enjoyed an increase in the value of their property even with the restriction, because they have been allowed to build a significantly larger new home with garage on their lot. Finally, appellants can claim the disruption of no expectation interest, both because they have no right to exclude the public under state law, and because, even if they did, they had full advance notice that new development along the coast is conditioned on provisions for continued public access to the ocean.

***862** Fortunately, the Court's decision regarding this application of the Commission's permit program will probably have little ultimate impact either on this parcel in particular or the Commission program in general. A preliminary study by a Senior Lands Agent in the State Attorney General's Office indicates that the portion of the beach at issue in this case likely belongs to the public. App. 85.[FN11] Since a full study had not been completed at the time of appellants' permit application, the deed restriction was requested "without regard to the possibility that the applicant is proposing development on public land." *Id.*, at 45. Furthermore, analysis by the same Land Agent also indicated that the public ****3162** had obtained a prescriptive right to the use of Faria Beach from the seawall to the ocean. *Id.*, at 86. [FN12] The Superior Court explicitly stated in its ruling against the Commission on the permit condition issue that "no part of this opinion is intended to foreclose the public's opportunity to adjudicate the possibility that public rights in [appellants'] beach have been acquired through prescriptive use." *Id.*, at 420.

> FN11. The Senior Land Agent's report to the Commission states that "based on my observations, presently, most, if not all of Faria Beach waterward of the existing seawalls [lies] *below* the Mean High Tide Level, and would fall in public domain or sovereign category of ownership." App. 85 (emphasis added).

FN12. The Senior Land Agent's report stated:

> "Based on my past experience and my investigation to date of this property it is my opinion that the area seaward of the revetment at 3822 Pacific Coast Highway, Faria Beach, as well as all the area seaward of the revetments built to protect the Faria Beach community, if not public owned, has been impliedly dedicated to the public for passive recreational use." *Id.*, at 86.

With respect to the permit condition program in general, the Commission should have little difficulty in the future in utilizing its expertise to demonstrate a specific connection between provisions for access and burdens on access produced by new development. Neither the Commission in its report nor the State in its briefs and at argument highlighted the particular threat to lateral access created by appellants' ***863** development project. In defending its action, the State emphasized the general point that *overall* access to the beach had been preserved, since the diminution of access created by the project had been offset by the gain in lateral access. This approach is understandable, given that the State relied on the reasonable assumption that its action was justified under the normal standard of review for determining legitimate exercises of a State's police power. In the future, alerted to the Court's apparently more demanding requirement, it need only make clear that a provision for public access directly responds to a particular type of burden on access created by a new development. Even if I did not believe that the record in this case satisfies this requirement, I would have to acknowledge that the record's documentation of the impact of coastal development indicates that the Commission should have little problem presenting its findings in a way that avoids a takings problem.

Nonetheless it is important to point out that the Court's insistence on a precise accounting system in this case is insensitive to the fact that increasing intensity of development in many areas calls for far-sighted, comprehensive planning that takes into account both the interdependence of land uses and the cumulative impact of development.[FN13] As one scholar has noted:

FN13. As the California Court of Appeals noted in 1985, "Since 1972, permission has been granted to construct more than 42,000 building units within the land jurisdiction of the Coastal Commission. In addition, pressure for development along the coast is expected to increase since approximately 85% of California's population lives within 30 miles of the coast." *Grupe v. California Coastal Comm'n*, 166 Cal.App.3d 148, 167, n. 12, 212 Cal.Rptr. 578, 589, n. 12 (1985). See also Coastal Zone Management Act, 16 U.S.C. § 1451(c) (increasing demands on coastal zones "have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion").

"Property does not exist in isolation. Particular parcels are tied to one another in complex ways, and property is ***864** more accurately described as being inextricably part of a network of relationships that is neither limited to, nor usefully defined by, the property boundaries with which the legal system is accustomed to dealing. Frequently, use of any given parcel of property is at the same time effectively a use of, or a demand upon, property beyond the border of the user." Sax, Takings, Private Property, and Public Rights, 81 Yale L.J. 149, 152 (1971) (footnote omitted).

As Congress has declared: "The key to more effective protection and use of the land and water resources of the coastal zone [is for the states to] develo [p] land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance." ****3163**16 U.S.C. § 1451(i). This is clearly a call for a focus on the overall impact of development on coastal areas. State agencies therefore require considerable flexibility in responding to private desires for development in a way that guarantees the preservation of public access to the coast. They should be encouraged to regulate development in the context of the overall balance of competing uses of the shoreline. The Court today does precisely the opposite, overruling an eminently reasonable exercise of an expert state agency's judgment, substituting its own narrow view of how this balance should be struck. Its reasoning is hardly suited to the complex reality of natural resource protection in the 20th century. I can only hope that

today's decision is an aberration, and that a broader vision ultimately prevails. [FN14]

FN14. I believe that States should be afforded considerable latitude in regulating private development, without fear that their regulatory efforts will often be found to constitute a taking. "*If* ... regulation denies the private property owner the use and enjoyment of his land and is found to effect a 'taking,' " however, I believe that compensation is the appropriate remedy for this constitutional violation. *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621, 656, 101 S.Ct. 1287, 1306, 67 L.Ed.2d 551 (1981) (BRENNAN, J., dissenting) (emphasis added). I therefore see my dissent here as completely consistent with my position in *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987).

I dissent.

***865** Justice BLACKMUN, dissenting.

I do not understand the Court's opinion in this case to implicate in any way the public-trust doctrine. The Court certainly had no reason to address the issue, for the Court of Appeal of California did not rest its decision on Art. X, § 4, of the California Constitution. Nor did the parties base their arguments before this Court on the doctrine.

I disagree with the Court's rigid interpretation of the necessary correlation between a burden created by development and a condition imposed pursuant to the State's police power to mitigate that burden. The land-use problems this country faces require creative solutions. These are not advanced by an "eye for an eye" mentality. The close nexus between benefits and burdens that the Court now imposes on permit conditions creates an anomaly in the ordinary requirement that a State's exercise of its police power need be no more than rationally based. See, *e.g.*, *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466, 101 S.Ct. 715, 725, 66 L.Ed.2d 659 (1981). In my view, the easement exacted from appellants and the problems their development created are adequately related to the governmental interest in providing public access to the beach. Coastal development by its very nature makes public access to the shore generally more difficult. Appellants' structure is part of that general development and, in particular, it diminishes the public's visual access to the ocean and decreases the public's sense that it may have physical access to the beach. These losses in access can be counteracted, at least in part, by the condition on appellants' construction permitting public passage that ensures access along the beach.

Traditional takings analysis compels the conclusion that there is no taking here. The governmental action is a valid exercise of the police power, and, so far as the record reveals, ***866** has a nonexistent economic effect on the value of appellants' property. No investment-backed expectations were diminished. It is significant that the Nollans had notice of the easement before they purchased the property and that public use of the beach had been permitted for decades.

For these reasons, I respectfully dissent.

Justice STEVENS, with whom Justice BLACKMUN joins, dissenting.

The debate between the Court and Justice BRENNAN illustrates an extremely important point concerning government regulation of the use of privately owned ****3164** real estate. Intelligent, well-informed public officials may in good faith disagree about the validity of specific types of land-use regulation. Even the wisest lawyers would have to acknowledge great uncertainty about the scope of this Court's takings jurisprudence. Yet, because of the Court's remarkable ruling in *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987), local governments and officials must pay the price for the necessarily vague standards in this area of the law.

In his dissent in *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621, 101 S.Ct. 1287, 67 L.Ed.2d 551 (1981), Justice BRENNAN proposed a brand new constitutional rule.[FN*] He argued that a mistake such as the one that a majority of the Court believes that the California Coastal Commission made in this case should automatically give rise to pecuniary liability for a "temporary taking." *Id.*, at 653-661, 101 S.Ct., at 1304-1309. Notwithstanding the unprecedented chilling effect that such a rule will obviously have on public officials charged with the responsibility for drafting and implementing regulations designed to protect the environment***867** and the public welfare, six Members of the Court recently endorsed Justice BRENNAN's novel proposal. See *First English*

Evangelical Lutheran Church, supra.

> FN* "The constitutional rule I propose requires that, once a court finds that a police power regulation has effected a 'taking,' the government entity must pay just compensation for the period commencing on the date the regulation first effected the 'taking,' and ending on the date the government entity chooses to rescind or otherwise amend the regulation." 450 U.S., at 658, 101 S.Ct., at 1307.

I write today to identify the severe tension between that dramatic development in the law and the view expressed by Justice BRENNAN's dissent in this case that the public interest is served by encouraging state agencies to exercise considerable flexibility in responding to private desires for development in a way that threatens the preservation of public resources. See *ante*, at 3154-3155. I like the hat that Justice BRENNAN has donned today better than the one he wore in *San Diego*, and I am persuaded that he has the better of the legal arguments here. Even if his position prevailed in this case, however, it would be of little solace to land-use planners who would still be left guessing about how the Court will react to the next case, and the one after that. As this case demonstrates, the rule of liability created by the Court in *First English* is a shortsighted one. Like Justice BRENNAN, I hope that "a broader vision ultimately prevails." *Ante*, at 3161.

I respectfully dissent.

U.S.Cal.,1987.
Nollan v. California Coastal Com'n
483 U.S. 825, 107 S.Ct. 3141, 26 ERC 1073, 97 L.Ed.2d 677, 55 USLW 5145, 17 Envtl. L. Rep. 20,918

END OF DOCUMENT

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

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

HEADNOTES

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

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

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

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

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

SUMMARY

APPEAL from an order of the Superior Court of Los Angeles County striking a third amended cross-complaint. Aubrey N. Irwin, Judge. Affirmed.

COUNSEL

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

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

PATROSSO, J. pro tem. [FN*]

FN* Assigned by Chairman of Judicial Council.

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

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

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

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

El Monte School District of a school building and also the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land hereinabove described. In conjunction therewith, said public interest and necessity require, that buildings, dwellings and structures within said tract of land be demolished, cleared, abated and/or removed, in the interest of the health, safety and morals of the people, because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings therein, in a manner that will be most compatible with the greatest public good and the least private injury. ... That there is grave danger of the creation of a public nuisance, unless the public uses herein referred to are provided for and the public interest and necessity stated above be adjuticated [sic]."

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

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

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

If, however, the third amended cross-complaint be construed as one whereby appellant as a private citizen seeks to acquire property for the purpose of constructing and operating a public school, it is likewise unauthorized by law. Section 1001 of the Civil Code, upon which appellant assertedly seeks to predicate his action, while authorizing any person, as "an agent of the State" or as "a person in charge of such use" to acquire private property under the power of eminent domain for any of the public uses provided in section 1238 of the Code of Civil Procedure is wholly without application. (4) A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the ***461** property sought to be acquired to one of the public uses provided in section 1238, but it must likewise be made to appear that he is authorized to devote the property to the public use in question, or otherwise stated, that he is a person authorized to administer or have "charge of such use." (*Beveridge v. Lewis* (1902), 137 Cal. 619, 621 [67 P. 1040, 70 P. 1083, 92 Am.St.Rep. 188, 58 L.R.A. 581].) (5) While appellant alleges by way of conclusion that he "is a person, competent and qualified to acquire the real property" described in his pleading "as

agent of the State and/or person in charge of the uses" therein set forth, the allegation must be disregarded, because we judicially know it is untrue. (*Wilson v. Loew's Inc.* (1956), 142 Cal.App.2d 183, 187-188 [298 P.2d 152].) (6) "The constitution declares that the legislature shall provide 'for a system of common schools,' or, as expressed elsewhere in the organic law, 'a public school system.' " (23 Cal.Jur. p. 18; Cal. Const., art. IX, §§ 5-6.) "By these two sections, the constitution makes the school system a matter of state care and supervision. The term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools. And this duty to provide for the education of the children of the state, so far as the state has, by the adoption of the constitution, undertaken it, cannot be delegated to any agency." (23 Cal.Jur. 21-22.) As said in *Piper v. Big Pine School Dist.*, 193 Cal. 664, 669 [226 P. 926]:

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

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

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

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

The order appealed from is affirmed.

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

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

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SANTA BARBARA SCHOOL DISTRICT et al., Petitioners,
v.
THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; C. RAYMOND MULLIN et al., Real Parties in Interest.
C. RAYMOND MULLIN et al., Plaintiffs and Respondents,
v.
SANTA BARBARA SCHOOL DISTRICT et al., Defendants and Appellants
L.A. No. 30054., L.A. No. 30086.

Supreme Court of California
January 15, 1975.

SUMMARY

In a class action under a complaint alleging two causes of action concerning the validity of the composition and election of a city board of education and one cause challenging the validity of a desegregation plan adopted at a board meeting, the trial court filed a memorandum of intended decision declaring an intent to enjoin implementation of the plan and also expressing the court's intent with respect to the other causes. However, before findings and conclusions were filed, the Supreme Court issued an alternative writ of prohibition limited in effect to the part of the intended decision concerned with implementation of the plan. Judgment was rendered on the first two causes. (Superior Court of Santa Barbara County, No. 96260, John T. Rickard, Judge.)

The Supreme Court ordered defendants' appeal from the judgment transferred from the Court of Appeal to it for consideration simultaneously with the writ proceeding. The judgment was reversed and the cause remanded with directions to enter judgment for defendants on the two causes relating to validity of the election and composition of the board. And a peremptory writ of prohibition issued to restrain the trial court's intended action in all respects except in enjoining implementation of the desegregation plan which had purportedly been adopted. It was held that the board had been without jurisdiction to adopt the plan at the meeting as a result of the failure of the posted agenda for that meeting to give adequate notice that the particular plan would be considered at the meeting. Additionally, the court held that as enacted in Proposition 21, Ed. Code, § 1009.6, barring the assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting segregation, but that the parts of the proposition which repealed Ed. Code, §§ 5002, 5003, declaring state policy of eliminating racial imbalance in schools, were severable from the invalid part and independently valid. And under the view that there is no constitutional right to a separate and elected elementary board of education and no unconstitutional infirmity in designating a city's board of education, elected from the full territory within its jurisdiction, to govern the lesser and wholly included elementary school district, the Supreme Court held that the Santa Barbara Board of Education, which has been designated by the Legislature to govern the city's elementary school district, may lawfully be the common governing board of the city's high and elementary school districts, even though they are not coterminous.

In Bank. (Opinion by Sullivan, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Schools § 10--School Districts--Assignment of Pupils on Basis of Race.
Ed. Code, § 1009.6, which bars assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting either de jure or de facto segregation.

(2) Schools § 10--School Districts--Validity of Repealing Provisions of Initiative.
Inasmuch as a policy in favor of neighborhood schools is a reasonably conceivable one and such an expression of policy can in no way limit or affect the constitutional obligations of school districts, the provisions found in §§ 2, 3, and 4 of Proposition 21, repealing Ed. Code, §§ 5002, 5003, which had declared the state policy of eliminating racial imbalance in schools and had delineated factors to be considered in implementing the policy, and also repealing certain administrative guidelines, cannot be struck down as

constitutionally impermissible.

(3) Schools § 10--School Districts--Severability of Initiative Provisions.
The fact that, as enacted in Proposition 21, Ed. Code, § 1009.6, barring the assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting segregation, does not necessarily invalidate the repealing provisions of the proposition, inasmuch as the repealing provisions are severable from the unconstitutional part not only mechanically, but also as to purpose and method, and are of independent validity and not inconsistent with the elimination of the invalid part.

(4a, 4b) Schools § 51 (5)--Administrative Officers--Boards--Meetings-- Jurisdiction.
Under Ed. Code, § 966, requiring the posting of an agenda 48 hours prior to a proposed meeting of a school board, the board cannot change its posted agenda within the 48-hour period next immediately preceding a regular meeting. If the board wishes to change the agenda substantially within that period, it must postpone a meeting at least 48 hours. Thus, where concerned parents and citizens could reasonably infer from the posted agenda that only those desegregation plans which had been previously presented would be considered at the meeting, the board had no jurisdiction to consider or approve a plan which was not presented until that meeting and which differed substantially from all the previously presented plans.

(5) Schools § 51 (5)--Administrative Officers--Boards--Meetings--Posted Agenda.
The proper posting of a school board meeting agenda, as required by Ed. Code, § 966, cannot be replaced by newspaper publicity.

(6) Schools § 51 (6)--Administrative Officers--Boards--Rights, Powers and Duties--Desegregation.
In desegregating a school system, a school board is not limited in the exercise of its powers to those acts reasonably necessary to effectuating desegregation.

(7) Schools § 77--Actions and Liability--Judicial Control Over Official Acts--Prohibition.
Prohibition was available to prevent the trial court from exceeding its jurisdiction by carrying out its memorandum of intended decision, insofar as the decision would amount to a substitution of the trial court's views for those of a school board with respect to a matter within the board's discretion concerned with the closing down of certain schools.
[See **Cal.Jur.2d, Rev.,** Schools, § 217; **Am.Jur.2d,** Schools, § 52.]
(8) Schools § 51 (1)--Administrative Officers--One Board as Governing Districts Which Are Not Coterminous.
There is no constitutional right to a separate, elected elementary board of education and no constitutional infirmity in designating a city's board of education, elected from the full territory within its jurisdiction, to govern the lesser and wholly included elementary school district. Therefore, the Santa Barbara Board of Education, which has been designated by the Legislature to be the governing board of the city's elementary school district, and which is elected in compliance with the "one man, one vote" rule, may lawfully be the common governing board of the elementary and high school districts despite the fact that they are not coterminous. And election of the board is not subject to attack on the theory that the election is also an election of the governing board of the elementary school district and that such latter election violates the "one man, one vote" rule as causing the dilution of the votes of electors residing in the elementary school district by the votes of non-resident electors.

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Price, Postel & Parma, Gary R. Ricks and Hollister, Brace & Angle for Real Parties in Interest and for Plaintiffs and Respondents.

No appearance for Respondent.

Bagley, Bianchi & Sheeks, William T. Bagley, Robert L. McWhirk, Levy & Van Bourg, Victor J. Van Bourg and

Stewart Weinberg as Amici Curiae. ***319**

SULLIVAN, J.

In this class action brought against two school districts and their common governing board of education, we are called upon to determine the validity of a desegregation plan for elementary schools. Our task also requires us to examine and pass upon the constitutionality of a recent initiative measure enacting certain anti-busing legislation and repealing existing statutes dealing with the prevention and elimination of racial and ethnic imbalance in pupil enrollment. Additionally we must examine the validity of the pertinent statute permitting the board of education in question to be the common governing board of the high school district and the elementary school district here involved. In essence, plaintiffs make two independent but cognate attacks - one against the board's plan and the other against the board itself. We take them up in that order, separately stating the facts proper to each. We first turn our attention to the desegregation plan.

I

Defendant Santa Barbara Board of Education (hereafter Board and referred to as defendant in the singular) is the common governing board of defendants Santa Barbara School District and Santa Barbara High School District. Defendant Norman B. Scharer is the Superintendent of Schools of Santa Barbara (superintendent).

Culminating a period of five years' planning and study aimed at correcting the racial imbalance in elementary schools, the Board on February 3, 1972, resolved "to move immediately toward the total desegregation of all Santa Barbara elementary schools beginning in September 1972." The Board adopted the following four-step procedure to effectuate this resolution: (1) the issuance by February 22, 1972, of a statement of policy on desegregation; (2) the creation of a "Task Force Committee for Desegregation," consisting of 22 members, to develop criteria for the study of proposed desegregation plans and to present such criteria to the Board no later than March 2, 1972; (3) the establishment of an "Education and Integration Study Committee," consisting of more than 100 members, under the chairmanship of the superintendent, to review various plans submitted for carrying out the desegregation-integration policy and to present to the Board, no later than May 4, 1972, two or three alternate plans; and (4) the determination that "[o]n May 18, 1972, this Board of Education will adopt one plan to be implemented as fully as possible in September 1972." ***320**

Both committees met numerous times and completed all work on schedule. On March 2, 1972, the Board adopted 12 criteria for guidance in reviewing the proposed desegregation plans. One of the criteria stated that any desegregation plan should "provide for optimum use of and be capable of being implemented within existing facilities."

Nine desegregation plans were received and studied initially by the "Task Force" and thereafter by the larger Education and Integration Study Committee. The latter committee by a vote of 74 to 4 recommended to the Board a specific desegregation plan known as the Hord-Mailes-Christian-Belden Plan, named after the four sponsoring elementary school principals. The committee also approved two alternate plans and prior to May 4, 1972, presented all three to the Board. These three plans, together with the West-Anderson plan not recommended by the committee, were formally presented to the Board at its meeting held on May 4, 1972.

Due to various objections raised by members of the Board in the ensuing discussion at that meeting, the superintendent decided to develop his own plan. On May 16, 1972, just two days prior to the Board meeting scheduled for final adoption of a desegregation plan, the superintendent announced, in an article appearing in the Santa Barbara News Press, that he proposed recommending a new desegregation plan at that meeting. The next day the same newspaper contained a longer article describing the general outlines of the so-called "Administration Plan." That night the plan was discussed at a meeting of the Education and Integration Study Committee. However, there was no time for study or review prior to the Board meeting the following night.

At its meeting on the next night - May 18, 1972 - the Board discussed the three plans recommended by the committee, the West-Anderson Plan and the Administration Plan. The last named plan was presented orally because it had not yet been reduced to writing. Despite two petitions signed by 3,000 people requesting a postponement for further study, the Administration Plan was adopted by the Board as orally presented. On June 8, 1972, the plan was summarized in writing and submitted to the State Department of Education for approval.

On June 9, 1972, C. Raymond Mullin and Howard G. Larson, on behalf of themselves and of all other voters, parents and taxpayers similarly situated, commenced the instant action seeking: (1) a writ of mandate to compel a special election of the Board and (2) declaratory ***321** and injunctive relief to prevent the implementation of the allegedly unlawful and inadequate desegregation plan. The complaint contained three causes of action: The first two which we discuss separately (see Part II, *infra*) concerned the validity of the election and composition of the Board; the third cause of action alleged that the adoption of the Administration Plan by the Board was: (1) invalid for failure to give notice as required by the Education Code and (2) an abuse of discretion, in that the Board hurriedly adopted an inadequately studied plan which failed to desegregate all the elementary schools, despite the closing of two elementary schools altogether and the changing of the kindergarten to grade six pattern in two other schools.

Following an eight-day trial, the court filed a memorandum of intended decision. In respect to the third count [FN1] which attacked the validity of the Administration Plan, the court declared its intention to enjoin implementation of the plan. It rested this contemplated action on two bases. First, the court concluded that the Board had no jurisdiction to close the schools since it had failed to include notice of the proposed closure of two schools in its published agenda as required by section 966 of the Education Code. The court determined that the closure of the schools was such an integral part of the Administration Plan that the whole plan must fall. Secondly, the court concluded that the Board abused its discretion by adopting the Administration Plan requiring the closure of two schools since such closure was not reasonably necessary to the effective desegregation of the elementary schools.

> FN1 The memorandum of intended decision also included a proposed decision on the first two causes of action as well, which is discussed in Part II of this opinion.

Before findings of fact and conclusions of law, based on the court's memorandum of intended decision were filed, defendants presented to this court a petition invoking our original jurisdiction and seeking a writ of prohibition restraining the trial court from entering judgment in accord with the memorandum of intended decision. We issued an alternative writ of prohibition. [FN2] On August 28, 1972, plaintiffs petitioned this court to modify the alternative writ so as to omit any stay of the trial court's proposed order enjoining implementation of the plan. Since in issuing the alternative writ, we had determined that the petition had made a prima facie showing that the proposed action of the trial court ***322** was in excess of its jurisdiction and therefore that its proposed enjoining of the Administration Plan must be prohibited pending our final determination of the issue, we denied the petition for modification.

> FN2 As prayed for in the petition, the alternative writ of prohibition was limited in effect to the intended decision on the third cause of action. The trial court thereafter entered judgment on the first two causes of action and defendants appealed. We ordered such appeal transferred from the Court of Appeal to this court so that we could consider it simultaneously with the writ proceeding.

Subsequently an additional factor was injected into the resolution of the above proceeding with the adoption by the electorate at the general election held on November 7, 1972, of the initiative measure denominated Proposition 21. Section 1 of that proposition added to the Education Code section 1009.6 providing: “No public school student shall, because of his race, creed, or color, be assigned to or be required to attend a particular school.” Sections 2 and 3 of Proposition 21 repealed sections 5002 and 5003 [FN3] respectively of the Education Code, which had declared the state policy of eliminating racial imbalance in California schools and had delineated the various factors to be considered in implementing this policy. Section 4 of Proposition 21, repealed the administrative guidelines toward achieving racial balance in the schools adopted by the State Board of Education. (§§ 14020 and 14021 of tit. 5 of the Cal. Admin. Code.) ***323**

> FN3 Section 5002 provides: “It is the declared policy of the Legislature that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas, and school attendance practices.”

Section 5003 provides: "(a) In carrying out the policy of Section 5002, consideration shall be given to the following factors:

"(1) A comparison of the numbers and percentages of pupils of each racial and ethnic group in the district with their numbers and percentages in each school and each grade.

"(2) A comparison of the numbers and percentages of pupils of each racial and ethnic group in certain schools with those in other schools in adjacent areas of the district.

"(3) Trends and rates of population change among racial and ethnic groups within the total district, in each school, and in each grade.

"(4) The effects on the racial and ethnic composition of each school and each grade of alternate plans for selecting or enlarging school sites, or for establishing or altering school attendance areas and school attendance practices.

"(b) The governing board of each school district shall periodically, at such time and in such form as the Department of Education shall prescribe, submit statistics sufficient to enable a determination to be made of the numbers and percentages of the various racial and ethnic groups in every public school under the jurisdiction of each such governing board.

"(c) For purposes of Section 5002 and this section, a racial or ethnic imbalance is indicated in a school if the percentage of pupils of one or more racial or ethnic groups differs significantly from the districtwide percentage.

"(d) A district shall study and consider plans which would result in alternative pupil distributions which would remedy such an imbalance upon a finding by the Department of Education that the percentage of pupils of one or more racial or ethnic groups in a school differs significantly from the district-wide percentage. A district undertaking such a study may consider among feasibility factors the following:

"(1) Traditional factors used in site selection, boundary determination, and school organization by grade level.

"(2) The factors mentioned in subdivision (a) of this section.

"(3) The high priority established in Section 5002.

"(4) The effect of such alternative plans on the educational programs in that district.

"In considering such alternative plans the district shall analyze the total educational impact of such plans on the pupils of the district. Reports of such a district study and resulting plans of action, with schedules for implementation, shall be submitted to the Department of Education, for its acceptance or rejection, at such time and in such form as the department shall prescribe. The department shall determine the adequacy of alternative district plans and implementation schedules and shall report its findings as to the adequacy of alternative district plans and implementation schedules to the State Board of Education. A summary report of the findings of the department pursuant to this section shall be submitted to the Legislature each year.

"(e) The State Board of Education shall adopt rules and regulations to carry out the intent of Section 5002 and this section."

Since the Administration Plan was adopted by the Board pursuant to and in furtherance of the repealed code sections, and since the plan involved the assignment of various ethnic minority students to certain schools in order to create a racial balance among the elementary schools in the district, Proposition 21, if valid, would provide an independent basis to support the trial court's intended invalidation of the Administration Plan. This court has, therefore, allowed various amici curiae to file briefs directed to the question of the validity and constitutionality of Proposition 21.

In 1970 the Legislature had added to the Education Code,

[FN4] section 1009.5 which provided: "No governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written permission of the parent or guardian." This court in *San Francisco Unified School Dist.* v. *Johnson* (1971) 3 Cal.3d 937 [92 Cal.Rptr. 309, 479 P.2d 669] observed that this section was reasonably susceptible of two interpretations: "The ambiguity of section 1009.5 inheres in the phrase '*require*e any student or pupil to be transported.' [Fn. omitted.] (Italics added.) One may 'require' a student to be transported by punishing a refusal or by physically forcing him onto a school bus; in a second sense, one may 'require' a student to be transported by *assigning* him to a school beyond walking distance of his home." (

> FN4 Hereafter, unless otherwise indicated, all section references are to the Education Code. *Id*. at p. 945.) We reasoned that if the section were construed to prohibit assignment of pupils to a school beyond a reasonable walking distance from the pupil's home it would be unconstitutional. Applying the doctrine that where possible a statute will be construed in a manner that would uphold its constitutionality, we accordingly held that "section 1009.5 does no more than prohibit a school district from compelling ***324** students, without parental consent, to use means of transportation furnished by the district." (*Id*. at p. 942.)

Shortly after our decision in *Johnson*, the Legislature passed the Bagley Act adding sections 5002 and 5003 (see fn. 3, *ante*) which directed school districts to "eliminate racial and ethnic imbalance in pupil enrollment" and specified certain factors to be considered in developing plans to achieve racial balance. The proponents of Proposition 21 in their published argument in support of the proposition characterized the Bagley Act as a "forced integration measure ... which could only be accomplished through forced busing ... without regard to neighborhood schools or parental consent." They asserted opposition to "mandatory busing for the sole purpose of achieving forced integration" and to "reassign[ing] pupils from their neighborhood schools to achieve racial and ethnic balance." Proposition 21 purported to eliminate this evil by repealing the Bagley Act (§§ 5002 and 5003), as well as the complementary administrative regulations, and by adding section 1009.6 which would prohibit forced integration and mandatory busing by denying the school district's power to assign pupils to schools on the basis of race.

Defendants and various amici curiae urge that Proposition 21 is unconstitutional in its entirety, both insofar as it added section 1009.6 and as it repealed sections 5002 and 5003 along with the administrative guidelines.

We declared in *Johnson* that section 1009.5, if construed to bar assignment of pupils to a school beyond reasonable walking distance "would be unconstitutional if applied to districts manifesting racial segregation, whether de jure or de facto in character." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 954.) Section 1009.6 which bars the assignment of pupils on the basis of race is unconstitutional in the same manner and for the same reasons set forth by us in *Johnson*. We deem it unnecessary to repeat here at length our rationale in that case; our opinion speaks for itself. We merely outline here its essentials, and underscore our conclusions with reference to subsequent United States Supreme Court cases.

First: We emphasized in *Johnson* that "Often the most effective program, and at times the only program, which will eliminate segregated schools requires pupil reassignment and busing. ... Since the U.S. Supreme Court has held that under the Constitution school boards in *de jure segregated districts* are 'clearly charged with the affirmative duty to ***325** take whatever steps might be necessary' to eliminate segregation 'root and branch,' a statute which would proscribe a principal, and in some cases essential and exclusive step to achieve that end, must obviously violate constitutional requirements." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d 937, 955.) (Italics added.)

Approximately three months after we expressed these views in *Johnson* in dealing with section 1009.5, the United States Supreme Court in *Board of Education v. Swann* (1971) 402 U.S. 43 [28 L.Ed.2d 586, 91 S.Ct. 1284] struck down a statute virtually identical with section 1009.6 [FN5] (added to the code in 1972 by Proposition 21) with an unmistakably clear and forceful expression of the same constitutional mandate. "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid ... all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate dual school systems. [¶]

Similarly, the flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. ... [¶] We likewise conclude that an absolute prohibition against transportation of students assigned on the basis of race, 'or for the purpose of creating a balance or ratio,' will similarly hamper the ability of local authorities to effectively remedy constitutional violations." (

> FN5 North Carolina General Statutes section 115-176.1 (Supp. 1969) provides in relevant part: "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited ...." *Id*. at p. 46 [28 L.Ed.2d at p. 589].)

Second: We further held in *Johnson* that section 1009.5 was unconstitutional as applied to school districts manifesting de facto as well as de jure racial segregation. Citing a number of decisions of lower federal courts (3 Cal.3d at p. 956, fns. 21-23), we observed that they had not drawn a clear distinction between de facto and de jure segregation and that some of them had defined de facto segregation as "that resulting from residential patterns in a nonracially motivated neighborhood school system." (*Id*. at p. 956, fn. omitted; citing inter alia, *Keyes v. School District Number One, Denver, Colorado* (D.Colo. 1970) 313 F.Supp. 61, 73-75; *Swann v. Charlotte-Mecklenburg Bd. of Educ.* (4th Cir. 1970) 431 F.2d 138, 141; 3 Cal.3d at p. 956, fns. 21 and 22.) We noted the necessary ***326** influence of school board decisions on the racial composition of residential areas.

Canvassing these federal precedents we concluded: "Thus under the current pattern of court decisions, neither school districts nor lower courts can determine with any confidence whether a pattern of school segregation should be classed as de facto or de jure. Consequently, if we held section 1009.5 unconstitutional only as applied to districts of de jure segregation, no school board in California ... could ascertain whether section 1009.5 could constitutionally apply within its district. Such a holding would, therefore, entail uncertain enforcement of section 1009.5, a confusion which would inhibit and delay school boards in their efforts to bring about full equality of educational opportunity. The *Green* decision [*Green v. County School Board* (1968) 391 U.S. 430 (20 L.Ed.2d 716, 88 S.Ct. 1689)] calls for desegregation now; a statute which imports confusion and delay in the uprooting of de jure segregation violates both the rule prohibiting partial enforcement of legislation, when such enforcement entails the danger of vague future application, and the mandate of the Supreme Court of the United States." (*San Francisco Unified School Dist. v. Johnson*, *supra*, 3 Cal.3d at p. 957.)

(1) This reasoning has been substantially buttressed by the recent decision of the United States Supreme Court in *Keyes v. School District, No. 1, Denver, Colo.* (1973) 413 U.S. 189 [37 L.Ed.2d 548, 93 S.Ct. 2686]. In *Keyes* the high court defined de jure segregation as "current condition of segregation resulting from intentional state action." (*Id*. at p. 205 [37 L.Ed.2d at pp. 561-562].) As potentially probative of an intentional segregative action on the part of school boards, the court referred to "policies and practices with respect to schoolsite location, school size, school renovations and additions, student-attendance zones, student assignment and transfer options, mobile classroom units, transportation of students, assignment of faculty and staff etc." (*Id*. at pp. 213-214 [37 L.Ed.2d at p. 566].)

The high court further emphasized that segregatory intent on the part of the school board is not limited to actions in the immediate present. "We reject any suggestion that remoteness in time has any relevance to the issue of intent. If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time certainly does not make those actions any less 'intentional.'"" (*Id*. at p. 210 [37 L.Ed.2d at p. 564].) We read this to mean that a school board therefore can ascertain ***327** whether the segregation present in its district is de jure or de facto only by examining the full history of acts by the school authorities and determining if, at any time in that course of action, some acts were undertaken with segregatory intent. We think it is clear that no school board or lower court can ascertain with any degree of confidence whether section 1009.6 can constitutionally apply in its district and we further believe that therefore a determination by this court that section 1009.6 can apply to districts manifesting de facto segregation would involve uncertain enforcement and improperly delay elimination of de jure segregation.

The Supreme Court has continuously reiterated its com-

mitment to eliminating de jure racial segregation and its unwillingness to accept any limitation upon procedures necessary to the resolute and thorough accomplishment of that task. To allow school authorities to rest content in the assumption that the pattern of segregation in their district is de facto and therefore to claim that section 1009.6 prohibits them from eliminating that segregation by pupil assignment on the basis of race implemented through busing, would impermissibly impede the constitutionally mandated task of rooting out de jure segregation. "[I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees." (*Board of Education v. Swann, supra,* 402 U.S. at p. 45 [28 L.Ed.2d at p. 589].)

The high court has also recognized the discouraging fact of the "dilatory tactics of many school authorities"; the "failure of local authorities to meet their constitutional obligations [has] aggravated the massive problem of converting from the state-enforced discrimination of racially separate school [s]." (*Swann v. Board of Education* (1971) 402 U.S. 1, 14 [28 L.Ed.2d 554, 565, 91 S.Ct. 1267].) In view of this history, it is all too clear to us that the elimination of de jure segregation would be seriously impeded if school authorities could claim a legal disability to assign or bus pupils merely by asserting that the segregation in their district was de facto in origin.

Consistently with our earlier holding in *Johnson* and indeed under the compulsion of the decisions of the United States Supreme Court in *Swann* and *Keyes* which confirm our views in *Johnson*, we hold, as ***328** indeed we must, that section 1009.6 as applied to school districts manifesting either de jure or de facto segregation is unconstitutional.

We proceed to consider a related issue. It will be recalled that Proposition 21 not only added section 1009.6 but also repealed sections 5002 and 5003 as well as certain administrative guidelines. (See fn. 3, *ante*.) Various amici curiae urge that the repealing provisions of Proposition 21 (i.e., §§ 2, 3 and 4) are also unconstitutional, on two grounds: (1) the repeal of these sections significantly encourages and involves the state in racial discrimination and (2) even if constitutional in themselves, the repealing provisions are tainted by the unconstitutional portion of Proposition 21 and cannot be severed from it.

On the first point amici argue that our holding in *Mulkey* v. *Reitman* (1966) 64 Cal.2d 529 [50 Cal.Rptr. 881, 413 P.2d 825] compels the conclusion that the repealing provisions are themselves unconstitutional. In *Mulkey* we held unconstitutional as violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution, article I, section 26 of the California Constitution, an initiative measure appearing as Proposition 14 on the statewide ballot in the general election of 1964 and adopted by the electorate. That proposition nullified state statutes aimed at eliminating racial discrimination in housing and barred the state from legislating in the future so as to limit the right of private discrimination in the sale or leasing of property. We there focused on the distinction between racial discrimination resulting from state action and that resulting from the private acts of individuals, framing the issue before us thusly: "The only real question ... is whether the discrimination results solely from the claimed private action or instead results at least in part from state action which is sufficiently involved to bring the matter within the proscription of the Fourteenth Amendment." (*Mulkey v. Reitman, supra,* 64 Cal.2d at p. 536.) Finding the requisite state action, we concluded: "Here the state has affirmatively acted to change its existing laws from a situation wherein the discrimination practiced was legally restricted to one wherein it is encouraged .... Certainly the act of which complaint is made is as much, if not more, the legislative action which authorized private discrimination as it is the final, private act of discrimination itself. ... When the electorate assumes to exercise the lawmaking function, then the electorate is as much a state agency as any of its elected officials." (*Id.* at p. 542.) Amici contend that the repealing portions of Proposition 21 (i.e., §§ 2, 3 and 4) similarly were intended to, and will result in, preserving racial discrimination and ***329** segregation, in this instance in the school systems, and thus that the very passage of Proposition 21 involves the state in racial discrimination.

However, *Mulkey* is actually of no assistance to the amici's argument. The mere fact that the initiative measures in both instances - Proposition 14 in *Mulkey* and Proposition 21 in the case at bench - represent state action proves nothing, since in the instant case, the state, *independent of the passage of Proposition 21*, is involved in education. Indeed in *Mulkey* we noted this critical difference: "[I]n *Jackson v. Pasadena City School Dist.*, ... the state, be-

cause it had undertaken through school districts to provide educational facilities to the youth of the state, was required to do so in a manner which avoided segregation and unreasonable racial imbalance in its schools." (*Mulkey v. Reitman, supra*, 64 Cal.2d at p. 537.) Proposition 21 by repealing the involvement of the state government in discharging the state's duty not to segregate, neither abrogated the school district's constitutional duty not to segregate nor removed the state from involvement through local school districts in the field of education. There is no problem of state involvement under the Fourteenth Amendment - it is simply a question whether the state involvement shall be solely by the local school districts or shall include involvement by the state government as well.

Amici curiae assert that, prior to the adoption of sections 14020 and 14021 of title 5 of the California Administrative Code and the passage of sections 5002 and 5003, local school districts had been very slow in seeking and achieving racial balance in the school system. As a result of the adoption of these sections and their enforcement in the courts, there was a significantly increased activity directed toward preventing, reducing and eliminating racial imbalance in the schools. It appears clear, amici argue, that the repeal pursuant to Proposition 21 (see fn. 3, *ante*, and accompanying test) of sections 5002 and 5003 will have the effect of retarding, if not reversing, this process of establishing racial balance in the schools of California. Finally, it is urged, the avowed purpose of Proposition 21 was opposition to these sections as a "forced integration measure ... which could only be accomplished through forced busing ... without regard to neighborhood schools or parental consent." (Ballot Pamphlet, argument in favor of Proposition 21, as presented to the voters of the State of California, General Election (Nov. 7, 1972).)

In one respect the gist of amici's argument is to ask this court to take judicial notice that local school districts fail to fulfill their constitutional obligation to desegregate, and thus to conclude that the passage of ***330** Proposition 21 constituted state involvement in racial discrimination. Even if it were within our province to take such judicial notice, no facts have been presented to us supportive of amici's contention.

In another respect, the essence of the argument is to assert that the policy of the Legislature declared in sections 5002 and 5003 is inherently invulnerable to change through an initiative measure. On the contrary, since racial balance determined according to a precise statutory formula is not a constitutional prerequisite but a matter of state policy, the people of California through the initiative process, have the power to declare state policy. The repealing provisions of Proposition 21 can conceivably be interpreted as an expression by the people of this state of their preference for a "neighborhood school policy." (See *Keyes v. School Dist. No. 1, Denver, Colo., supra*, 413 U.S. at p. 206 [37 L.Ed.2d at p. 562].) We deem it unnecessary to the resolution of the issues now before us to determine precisely what was the intention of the electorate in this respect and accordingly intimate no views on the subject. (2) We merely conclude that since a policy in favor of neighborhood schools is a reasonably conceivable one and since such an expression of policy can in no way limit or affect the constitutional obligations of school districts, the repealing provisions found in sections 2, 3 and 4 cannot be struck down as constitutionally impermissible. It may be that our assessment of the people's desires in this respect is erroneous; if so, constitutional processes are available to the people to reinstate what has been repealed.

We turn now to the second point of the argument, namely that the repealing sections of Proposition 21 (i.e., §§ 2, 3 and 4) cannot be severed from the unconstitutional portion thereof (i.e., § 1 adding § 1009.6 to the Ed. Code) and therefore the proposition in its entirety must fall as unconstitutional.

The rule on severability is set forth in *In re Blaney* (1947) 30 Cal.2d 643, 655 [184 P.2d 892]: "But if the statute is not severable, then the void part taints the remainder and the whole becomes a nullity. It is also true that in considering the issue of severability, it must be recognized that the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. *This is possible and proper where the language of the statute is mechanically severable*, that is, where the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words. [Citations.] On the other hand, where there is no possibility of mechanical severance, as where the ***331** language is so broad as to cover subjects within and without the legislative power, and the defect cannot be cured by excising any word or group of words, the problem is quite different and more difficult of solution." (Italics added.) (In accord: *Villa v. Hall* (1971) 6 Cal.3d 227, 236 [98 Cal.Rptr. 460, 490 P.2d 1148]; *Mulkey* v. *Reitman, supra*, 64 Cal.2d 529,

543-544; *In re Portnoy* (1942) 21 Cal.2d 237, 242 [131 P.2d 1]; *In re Bell* (1942) 19 Cal.2d 488, 498 [122 P.2d 22]; *Bacon Service Corporation* v. *Huss* (1926) 199 Cal. 21, 32-33 [248 P. 235]; *McCafferty* v. *Board of Supervisors* (1969) 3 Cal.App.3d 190, 193 [83 Cal.Rptr. 229].)

Proposition 21 contained a severability clause. [FN6] The valid repealing portions can easily and accurately be mechanically severed from the invalid portion enacting section 1009.6. "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. [Citation.]" (*McCafferty v. Board of Supervisors, supra*, 3 Cal.App.3d at p. 193.) Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether "the remainder ... is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute" (*In re Bell, supra*, 19 Cal.2d 488, 498) or "constitutes a completely operative expression of the legislative intent ... [and] are [not] so connected with the rest of the statute as to be inseparable." (*In re Portnoy, supra*, 21 Cal.2d at p. 242.)

> FN6 "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Amici curiae merely assert that the various portions of the proposition are clearly inseparable. However, it seems that the valid and invalid portions of the proposition, while subsumed within an overall purpose to eliminate forced integration by busing without regard to the desirability of maintaining neighborhood schools, reflect separable methods of achieving this purpose. The repealing provisions (the valid part) would eliminate a commitment to achieving racial balance in the schools, leaving local school districts with sole responsibility and without direction other than constitutional mandate; the enactment of section 1009.6 (the invalid part) went further and forced upon the local school districts the neighborhood school concept without forced busing as the only acceptable policy. Even though this restriction of local school ***332** district discretion is unconstitutional and therefore the full purpose of Proposition 21 cannot be realized, it seems eminently reasonable to suppose that those who favor the proposition would be happy to achieve at least some substantial portion of their purpose, namely to eliminate a state commitment to racial balance in the schools regardless of other considerations, and thereby to allow local control subject only to constitutional restriction. (3) Thus, the repealing provisions are not only mechanically severable in that they are physically separate sections of the proposition, but they are also severable as to purpose and method, of independent validity and not inconsistent with the elimination of the invalid part. We hold the repealing portions of Proposition 21 to be severable. We cannot say that these portions must necessarily fall, because we hold section 1009.6 unconstitutional. [FN7]

> FN7 Amici curiae also urge that a different test should be applied to the severability of portions of an initiative measure than the above described test applied to statutes passed by the Legislature. However, in applying settled rules of severability, we can discern no meaningful distinctions between statutes "enacted" by the people and statutes enacted by the Legislature. The cases cited by amici curiae (e.g., *Bennett v. Drullard* (1915) 27 Cal.App. 180 [149 P. 368]; *Alexander* v. *Mitchell* (1953) 119 Cal.App.2d 816 [260 P.2d 261]) involved the question of severability prior to submission to a vote and also tested severability by the degree of integration between the valid and invalid parts. However, integration is determined by the test set forth by us *supra*.

We therefore conclude that Proposition 21 does not provide an independent basis for sustaining the trial court's intended injunction of the implementation of the Administration Plan since section 1009.6 added to the Education Code by the proposition bars assignment of public school students by race and is therefore unconstitutional and void under the decisional law of the United States Supreme Court and of this court, regardless of the proposition's effective repeal of other sections of the code.

We accordingly proceed to address ourselves to the question whether entry of judgment by the trial court on the third count in accord with its memorandum of intended decision would be an act in excess of its jurisdiction. As we have already stated, the court intended to enjoin implementation of the Administration Plan on two grounds: (1)

that the Board had no jurisdiction to close the Garfield and Jefferson Schools because it had failed to include notice of the proposed closure of these schools in its published agenda as required by section 966; (2) that the Board abused its discretion in adopting the Administration Plan which required the closure of the above two schools, when in fact their closure was not reasonably necessary to effective desegregation. ***333**

Section 966 requires a school board to act at meetings open to the public, with certain exceptions relating to personnel and pupil discipline matters, and to post an agenda 48 hours prior to the meeting containing "[a] list of items that will constitute the agenda for all regular meetings." [FN8] In *Carlson* v. *Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196 [95 Cal.Rptr. 650], the court held the provisions of section 966 are mandatory, so that noncompliance therewith by failing to list an item of business on the agenda invalidates the board's action in respect thereto. In *Carlson* the school board's agenda listed as one item "Continuation school site change." The action in fact taken was to move the "continuation school" to the Canyon View school building, to discontinue elementary education at that school, and to transfer the Canyon View elementary pupils to Ponderosa School. The court held that the agenda listing "was entirely inadequate notice to a citizenry which may have been concerned over a school *closure* ... was entirely misleading and inadequate to show the whole scope of the board's intended plans." (*Carlson v. Paradise Unified Sch. Dist., supra*, 18 Cal.App.3d at p. 200.)

FN8 Section 966 provides in pertinent part: "Except as provided in Section 54957 of the Government Code or in Section 967, all meetings of the governing board of any school district shall be open to the public, and all actions ... shall be taken at such meetings and *shall* be subject to the following requirements: ... (b) A list of items that will constitute the agenda for all regular meetings *shall* be posted at a place where parents and teachers may view the same at least 48 hours prior to the time of said regular meeting ...." (Italics added.)

In the case at bench, the posted agenda of the meeting of May 18, 1972, contained under the heading "Desegregation/Integration Plans" Item No. 3a which read as set forth in the margin. [FN9] At the meeting, the Board adopted the Administration Plan, which among other things, closed the Jefferson School and discontinued elementary school education at the Garfield School.

FN9 Item 3a headed "Desegregation/Integration Plans" read as follows:

"On February 3, 1972 the Board of Education set the following timetable in regard to a Desegregation/Integration Plan for the Elementary District:

"Thursday, May 4, 1972 - Presentation of plans to the Board
"Thursday, May 18, 1972 - Adoption of a plan by the Board
"September 1972 - Implementation of plan as fully as possible

"It is expected that the Board will take action at the meeting."

The trial court in its memorandum of intended decision concluded: "There was no possible way [the Administration Plan was not written and was not on file] that the public could discern from the posted agenda that the Board was about to consider the closure of two elementary schools, namely, Jefferson and Garfield, as indispensable ingredients of ***334** any desegregation plan. ... Any possible reference to such matters in a published newspaper article would in no event suffice to cure the deficiency. ... The Board did not comply with the provisions of section 966. It therefore lacked jurisdiction to adopt the Administration Plan .... The closure of the Jefferson and Garfield elementary schools is essential to this plan, and invalidates the same."

The Board contends that by listing adoption of a desegregation/integration plan, the posted agenda gave full and adequate notice of a wide range of possible Board actions including possible closure of schools. It is common knowledge that a desegregation/integration plan by its very nature involves a complete reworking of the school system and is likely to involve substantial changes in school at-

tendance patterns, including pupil assignment away from neighborhood schools and busing. Thus, the agenda item gave fair warning to parents of students at any of the elementary schools that the adoption of a plan might result in their children's not attending their neighborhood school, that is Jefferson, Garfield or any other elementary school, as the case might be. The fact that their children might end up attending a different school due to closure of their current school rather than to pupil assignment or school pairing is of little moment. The critical point is that parents were on notice that the Board at its meeting on May 18, 1972, might act in such a way that their children would no longer be able to attend Jefferson or Garfield schools.

This case is therefore clearly distinguishable from *Carlson*. There the item "continuation school site change" would have in no way notified parents of children attending Canyon View Elementary School that their children would be affected by such action and certainly would not have warned them that the school might be closed. It gave fair notice to parents of continuation school students as to impending changes and to people generally concerned about financial expenditures and priorities. However, the item in no way warned Canyon View Elementary School parents that their interests might be vitally affected.

In the case at bench, by contrast, the item concerning the adoption of a "Desegregation/Integration Plan," in our view gives clear notice to parents of students attending Jefferson, Garfield or any other elementary school that their interests might be vitally affected. We do not believe that the agenda item must specify the particular means by which the students involved would be sent to different schools, as for example by pupil assignment, busing, pairing of schools or closure of schools. It ***335** seems to us that all such actions are fairly contained within the comprehensive language of the notice.

Indeed, if the agenda had simply indicated the adoption of a "Desegregation/Integration Plan for the Elementary District," we would entertain no doubt that it would have given adequate notice. However, item 3a on the agenda referred to the sequence of procedures adopted by the Board for formation of an integration plan throughout the year - "Thursday, May 4, 1972 - Presentation of plans to the Board. Thursday, May 18, 1972 - Adoption of a plan by the Board." (See fn. 9, *ante*.) Concerned parents and citizens could reasonably infer from this notice that no new plans were to be presented on May 18 but rather that the Board would adopt one of the plans presented on May 4. If they had no objection to any of these plans, they might reasonably assume there was no need for them to attend the May 18 meeting.

However, the Administration Plan, which had *not* been presented at the May 4 meeting, differed radically from all the previous plans in many respects, most notably in providing for the closure of the Jefferson and Garfield schools. Parents of Jefferson and Garfield elementary school students had no notice that a plan involving closure of those two schools would be considered on May 18. Consequently we think that the notice by referring to the May 4 presentation of plans was misleading, by indicating that only those plans presented on May 4 would be considered for adoption on May 18. This is substantially confirmed by the very elaborate procedures adopted by the Board and participated in by the community in order to prepare and screen plans for presentation to the Board on May 4.

([4a](#)) Section 966 specifies 48 hours' notice with respect to regular meetings. It is a fair construction of the section that a board cannot change its posted agenda within the 48-hour period next immediately preceding a regular meeting; in other words, if a board wishes to change substantially its agenda within that period, it must postpone a meeting at least 48 hours. Since the Administration Plan had not been presented at the May 4 meeting and since it differed substantially from all the other plans, the Board's decision to consider and act upon it represented a substantial deviation from the posted agenda and therefore required an amendment to the agenda and a postponement of the meeting for such a period of time as to provide no less than 48 hours' notice.

It is true that the Board could have adopted a plan involving the ***336** closure of schools, if it had posted an agenda merely giving general notice of intention to adopt a desegregation/integration plan. However, once the Board posted notice that it would adopt one of the plans theretofore presented at the May 4 meeting, it thereby limited its power to consider any other substantially different plan since otherwise the posted agenda would be fatally misleading. It then became necessary for the Board to amend the posted agenda and reschedule the meeting so as to afford notice for the period of time specified by the statute.

The Board contends that the misleading effect of the notice was cured by newspaper publicity indicating that a new

plan was to be presented at the meeting of May 18. Two newspaper articles appeared explaining some of the details of the new plan. Only one of the two articles was released 48 hours or more before the meeting. (5) Moreover, newspaper publicity cannot replace the proper posting of an agenda. Section 966 requires notice by means of an agenda posted at a specified place. The newspaper article had no official status, its contents had not been checked or authorized by the Board, and there was no guaranty that it would have been read by all persons entitled to notice. On the other hand, under the statute all persons were presumed to know when and where the agenda of a meeting was to be posted and were entitled to rely on the contents of such statutory notice without being required to scour all newspapers and other publications for possible changes.

(4b) Accordingly we conclude that the trial court properly determined, albeit for the wrong reason, that the Board had no jurisdiction to consider or approve the Administration Plan due to its noncompliance with section 966. The trial court would therefore not act in excess of its jurisdiction in enjoining the implementation of the Administration Plan, unless and until the plan was adopted by the Board at a meeting preceded by the posting of an accurate and complete agenda as required by section 966.

The trial court, however, went further in its memorandum of intended decision and purported to permanently enjoin implementation of the Administration Plan on the ground that its adoption was an abuse of discretion by the Board since the closure of the two schools was not reasonably necessary to accomplish desegregation. [FN10] (6) The major premise in the trial court's reasoning - that in desegregating a school ***337** system, a school board is limited in the exercise of its powers to those acts reasonably necessary to effectuating desegregation - is utterly without support. The trial court concedes, as indeed it must, that the Board has power to close schools and convert them to other uses. It is, of course true that the Board is not free to exercise this power arbitrarily, but must act reasonably and in accordance with established procedure. "[A] court may not substitute its judgment for that of the administrative board [citation] and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld." (*Manjares v. Newton* (1966) 64 Cal.2d 365, 371 [49 Cal.Rptr. 805, 411 P.2d 901].) We have not found, nor have we been referred to, any authority supportive of the proposition that once a school board undertakes a desegregation/integration plan, its otherwise independent power to close schools becomes limited to closing only those schools which must reasonably be closed in order to accomplish desegregation. Acceptance of such a proposition would blind school boards to the full realities of the world about them, as for example, by directing in effect that they are powerless to close unsafe schools because desegregation might be effectuated without such closure.

> FN10 Plaintiffs also contend that the Board abused its discretion in adopting the Administration Plan because the plan does not meet the requirements of section 5003. Since we have held the repeal of this section valid, this argument must fail.

Indeed the case at bench presents exactly this situation. On August 12, 1971, the Board received a report that the Jefferson school was structurally unsafe within the requirements of section 15503. [FN11] 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. [FN12] 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 ***338** 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. We do not think that the Board in exercising this discretion was perforce limited to determining the reasonable necessity of replacing the building and thus automatically precluded from determining the necessity of assigning students in order to achieve desegregation.

> FN11 Section 15503, added in 1959 as part of the Field Act, requires all school buildings, not constructed pursuant to the Field Act, to be examined by January 1, 1970, in order to determine whether the building is safe for school use according to the standards set forth in the Field Act (§ 15451 et

seq.). If a school building is found to be unsafe, the governing board of that school district must prepare an estimate of the cost necessary to make the building safe.

FN12 Section 15516 provides: "No school building examined and found to be unsafe for school use pursuant to Section 15503 and not repaired or reconstructed in accordance with the provisions of this article shall be used as a school building for elementary and secondary school or community college purposes after June 30, 1975."

In 1969 the Board adopted a master plan to guide the development of the school district. Item 6 of that plan provided: "As soon as funds become available in the Elementary District to provide housing at expanded schools elsewhere, that Garfield School be closed and converted to a Special Education Center to provide for certain parts ... of the Special Education program." The superintendent incorporated this provision into his Administration Plan. Absent proof that there were no school facilities to absorb these students or no need for a special education center, [FN13] the Board, in the reasonable exercise of its discretion, could lawfully take this action. The mere fact that this action was part of a desegregation plan did not automatically strip the Board of its otherwise subsisting authority to act in this area, so that the establishment of an education center was contingent upon it being reasonably necessary to accomplish desegregation .

FN13 School boards have the authority to provide special education programs and facilities. (§§ 6500-6742, 6750-6946.)

(7) Since the trial court proposed to so limit the discretion of the Board, it would be substituting its judgment for that of the school board and therefore acting in excess of its jurisdiction. A writ of prohibition is the appropriate remedy where a threatened judgment of the trial court will be in excess of its jurisdiction. (*City & County of S.F.* v. *Superior Court* (1959) 53 Cal.2d 236, 243 [1 Cal.Rptr. 158, 347 P.2d 294]; 5 Witkin, Cal. Procedure (2d ed. 1971) Extraordinary Writs, §§ 36, 39, pp. 3810-3811, 3813.)

As to the instant writ proceeding (L.A. 30054) which is confined to plaintiffs' third cause of action below, we arrive at these final conclusions: (1) That section 1009.6 being unconstitutional and void does not bar the Board's Administration Plan for desegregation; (2) that the Board's power to close schools exists independently of its constitutional obligation to desegregate and is not contingent upon such closure being ***339** reasonably necessary to effectuate desegregation; (3) that the posted agenda was defective insofar as it related to the closure of the two elementary schools because of the Board's failure to comply with section 966 and that, since said proposed action for closure was an inseparable part of the Administration Plan, the adoption of the plan as a whole was invalid because of such noncompliance; and (4) that in respect to the third count the trial court will not act in excess of its jurisdiction by enjoining the implementation of the Administration Plan upon the basis heretofore set forth by us, namely, for the failure of the Board to comply with section 966 but that in all other respects the intended action of the trial court as set forth in its memorandum of intended decision is in excess of the court's jurisdiction. Nothing herein, of course, shall prevent, or be deemed to prevent, the Board from adopting the Administration Plan at a new meeting held upon proper notice and in compliance with all other legal requirements.

It follows that in L. A. 30054, petitioners (defendants below) are not entitled to a peremptory writ of prohibition restraining respondent court from enjoining the implementation of the Administration Plan for failure of the Board to comply with section 966 but are entitled to such writ restraining the court's intended action in all other respects. (See *Brown v. Superior Court* (1949) 34 Cal.2d 559, 566 [212 P.2d 878]; see 5 Witkin, Cal. Procedure (2d ed. 1971) p. 3933.) The writ shall issue accordingly.

II

We now turn our attention to the appeal before us. (See fn. 2, *ante*.) This is from a judgment entered on the first two causes of action which were not stayed by our alternative writ of prohibition. The central issue here confronting us is whether the Board may lawfully be the common governing Board of both the Santa Barbara (elementary) School District and the Santa Barbara High School District despite the fact that such districts are not coterminous.

We deem it necessary to set forth the facts in some detail. The original Santa Barbara School District, which was organized sometime in the 1870's, comprised all the public schools within the city limits and conducted classes from

kindergarten through high school, under the leadership of the school trustees. The initial charter for the City of Santa Barbara, adopted February 20, 1899, created a school department, consisting of all the public schools in the school district, governed by a ***340** five-man board of education. The charter specified the duties and powers of the board of education in great detail and provided that the board succeeded to all the property and rights of the former school trustees.

In 1902 this single geographical school district was divided functionally into two separate districts: the elementary school district (known as the Santa Barbara School District) and the high school district (known as the Santa Barbara High School District), comprising both junior and senior high schools. The two districts were coterminous; their boundaries were the city limits. The single board of education remained responsible for the governing of all the public schools in the school districts, since the charter was not amended following this functional division into two school districts. Upon the adoption of new charters in 1918 and again in 1927, former provisions dealing with the board of education were revised and simplified by replacing the detailed enumeration of the board's duties and powers with an incorporation of provisions set forth in the general laws of the state. Despite these revisions, nevertheless, the new charters retained a *single* board of education invested with control over all schools in that city. [FN14]

> FN14 Section 83 of the Charter of the City of Santa Barbara adopted in 1927 provided:"The Board of Education shall consist of five members. ..."
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> Section 84 provided: "The Board of Education shall have the entire control and management of the public schools in the city of Santa Barbara in accordance with the constitution and general laws of the state and said board is hereby vested with all the powers and charged with all the duties of such control and management."
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> Sections 55 and 56 of the charter adopted in 1918 contained virtually identical provisions.

Indeed the 1927 charter specified a single board of education even though the two school districts were no longer coterminous themselves or with the city. From 1902 to 1930 while the elementary school districts remained virtually constant in size, incorporating only minor portions of adjacent unincorporated territory, the high school district annexed large portions of adjacent territory and far outstripped the elementary school district in size. By 1930 the pattern of annexations was complete. The high school district was comprised of the original high school district (i.e., coterminous with the city limits and the elementary school district) plus the geographical area of four additional elementary school districts, Montecito Union School District, Cold Springs School District, Hope School District and Goleta Union School District. These four elementary school districts were annexed solely for the purpose of becoming part of the Santa Barbara High School District. They continued to function as ***341** wholly independent elementary school districts governed by their own elementary school board.

Despite these changes in the composition and size of the elementary and high school districts no change was made in the charter. That instrument continued to direct, as it did upon its adoption in 1927 that there be a single board of education having the entire control and management of all the public schools. In 1939, section 83 of the charter (see fn. 14, *ante*) was amended to provide that the members of the board should serve staggered six-year terms.

No further changes were made in the charter provisions concerning the board of education until a new charter was adopted in 1967. The new charter retained the provision for a single elective board of education, directed that its adoption should not affect boundaries of existing school districts and generally provided that all other requirements should be "as now or hereafter prescribed by the Education Code." [FN15] Despite the changes in language the new charter provisions continued essentially the same educational scheme. The changes appear to correspond with those introduced into the Education Code in 1963, since section 900 of the charter tracks the language of section 1223 of the code. [FN16] Thus, in short the charter directs that there shall be an elective board of education and leaves other requirements to those found in the code.

> FN15 Article IX of the charter headed, Board of Education, provides: "Section 900. State Law Governs. The manner in which, the times at which, and the terms for which the members of the Board of Education shall be elected or appointed, their qualifications, compensation and removal and the number which shall constitute

such board shall be as now or hereafter prescribed by the Education Code of the State of California.

"Section 901. Effect of Charter on District. The adoption of this Charter shall not have the effect of creating any new school district nor shall the adoption of this Charter have any effect upon the existence or boundaries of any present school district within the City or of which the City comprises a part."

FN16 Section 1223 of the Education Code provides: "Except as provided in Section 1222, whenever the charter of any city fails to provide for the manner in which, the times at which, or the terms for which the members of the city board of education shall be elected or appointed, for their qualifications, removal, or for the number which shall constitute such board, the provisions of this division shall apply to the matter not provided for."

Section 1224 provides that the members of the board of education shall be elected at large from the territory within the boundaries of the school district or districts under the jurisdiction of the board of education, that for election purposes such territory shall include outside territory annexed to the city for school purposes, and that all qualified electors residing within the full territory shall be eligible to vote for, and ***342** to be a member of, the board of education. [FN17] Therefore all qualified electors residing within the high school district, which is geographically coterminous with the five elementary school districts - the Santa Barbara elementary school district plus the four annexed districts (Montecito, Cold Springs, Hope and Goleta) - are entitled to vote for the city board of education. At the time of trial, there were 80,203 registered voters residing within the high school district, of whom 38, 174 or 47.6 percent resided within the Santa Barbara elementary school district and 42,029 or 52.4 percent resided within the four annexed elementary school districts.

FN17 Section 1224 provides: "The members of any elective city board of education shall be elected at large from the territory within the boundaries of the school district or districts which are under the jurisdiction of the city board of education, whether sitting as a board of education, high school board, or community college board, and any qualified elector of the territory shall be eligible to be a member of such city board of education.

"When outside territory has been annexed to a city for school purposes it shall be deemed a part of the city for the purpose of holding the general municipal election, and shall form one or more election precincts, as may be determined by the legislative authority of the city. The qualified electors of the annexed territory shall vote only for the board of education or the board of school trustees."

The four annexed elementary school districts continued to be governed by four separate elementary school boards elected separately by qualified electors residing within each elementary school district. The Santa Barbara elementary school district, however, did not have its own separate elementary school board. Instead, by virtue of the charter provisions and section 1222 of the Education Code incorporated in the charter (see fn. 15, *ante*), the Santa Barbara elementary school district was governed by the city board of education. [FN18] Thus, an elector residing within one of the four annexed districts, for example Montecito, would be entitled to cast two votes - one to elect members to the Montecito Elementary School Board from the residents within that district and one to elect members to the city board of education. An elector residing within the Santa Barbara elementary school district would be entitled to cast only one vote - that one being to elect the city board of education.

FN18 Section 1222 provides: "Whenever the charter of a city comprising in whole or in part an elementary school district, fails to provide for the manner in which, the times at which, and the terms for which the members of the board of education of such city are appointed, and for the number which shall constitute such board, *the governing board of the elementary school district* within which the city is located or with which the city is coterminous *is the board of education of the city*." (Italics added.)

As mentioned earlier, plaintiffs in their first two causes of action challenge the validity of the law permitting the city board of education to govern both the high school and the elementary school districts, despite the fact that the two

districts are not coterminous. The first cause of ***343** action alleged that this system unconstitutionally diluted the vote of each registered voter and taxpayer within the elementary school district by over 100 percent by virtue of the votes cast by that portion of the electorate who live outside the Santa Barbara elementary school district. The second cause of action alleged that this system violated the requirements of section 924 that the governing board of an elementary school district shall consist of members elected at large from the territory comprising the elementary school district.

Following trial by the court on these two causes of action, the court made findings of fact, substantially as recited above and concluded in essence that the above voting scheme was unconstitutional as being violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. We set forth in pertinent part in the margin the court's detailed conclusions. [FN19] ***344**

> FN19 "4. Insofar as the Board governs the affairs of the Elementary School District the scheme which permits the votes of 38,174 resident electors to be counted equally with the votes of the 42,029 non-resident electors, who are in no way concerned with the government of the Elementary District, constitutes a clear denial, dilution and debasement of the vote of the resident electors of the Elementary District and a deprivation of their constitutional right to the equal protection of the law.
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> "7. The present dual function of the School Board governing a large high school district and much smaller elementary school district does not serve any governmental purpose, but is rather the result of unplanned, irregular annexations to the High School District.
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> "9. The fact in this case that voters who reside outside the boundaries of the Elementary School District, who exceed in number those who reside within the district, are given the right to vote for the School Board which formulates policy for the district, even though they are in no way subject to such policy and do not contribute any tax support thereto, is contrary to the principle that the government is to be chosen by the governed.
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> "10. The equal voting strength principle, which underlies the 'one person, one vote' doctrine, applies in this case to the electoral scheme currently employed in the election of members to the governing board of the Santa Barbara Elementary School District. That principle is violated because the votes of qualified resident electors in the plaintiffs' class are being wrongfully denied, debased and diluted by the votes of non-qualified, non-resident electors in the Elementary District election.
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> "11. There is no State interest sufficiently compelling to justify the voting scheme described herein. That scheme is unconstitutional. It violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.
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> "14. To interpret Section 1224 of the Education Code to sanction the election of a common governing board for two districts whose boundaries are not coterminous, by electing the members of such board at large from the territory of the larger district, which encompasses all of the area of the smaller district plus added territory of the larger district, is to unconstitutionally apply the statute.
>
> "15. Section 1224 of the Education Code must be interpreted to grant common governing powers to an elective city board of education over two or more districts under its jurisdiction only in cases where the boundaries of the governed districts are coterminous. In a case such as here presented, where the boundaries of the districts are not co-

> terminous, Section 1224 may not be so interpreted to grant multiple jurisdiction to such a single elective board."

By way of remedy the court concluded that the Santa Barbara elementary school district must be governed by an independent board of resident electors of the Santa Barbara elementary school district elected at large from the territory within the elementary school district; that the present city board of education should be allowed to continue as the governing board of the high school district; that a new board consisting of five members and governing only the elementary school district should be elected on April 17, 1973, by resident electors within the Santa Barbara elementary school district and take office on July 1, 1973; that the three members with the highest vote should serve until June 30, 1977, and the remaining two members should serve until June 30, 1975, each member of the board thereafter serving a four-year term. Judgment granting a peremptory writ of mandate was entered accordingly. This appeal by defendants followed. [FN20]

> FN20 See footnote 2, *ante*, where the procedural history of this appeal as related to the disposition of the third cause of action is explained.

We begin by epitomizing the respective positions of the parties on the appeal. Plaintiffs contend that the method of electing members of the Santa Barbara Board of Education is invalid under the state and federal Constitutions as violative of the "one man, one vote" principle because the votes of *qualified, resident* electors in the elementary school district are debased and diluted by the votes of *nonqualified, nonresident* electors in the elementary district election. Plaintiffs argue that there should be, and the trial court properly ordered, a separate board of education to govern the elementary school district. Defendants, on the other hand, contend that the present method of electing members of the Board complies with applicable state law, that it does not violate the "one man, one vote" rule, and that the trial court's ruling on this issue is in error. (8) As we explain, *infra*, we conclude that there is no constitutional right to a separate, elected elementary board of education, that there is no constitutional infirmity in designating the city board of education, elected from the full territory within its jurisdiction, to govern the lesser, wholly included elementary school district and that the "one man, one vote" principle has no relevancy to this case.

The city board of education is elected. Each qualified elector residing within the high school district, the largest geographical area within the ***345** jurisdiction of the board of education, is eligible to become a member of the board and is entitled to vote in the election. The members are elected at large. Each vote counts equally and is weighted equally. Each qualified elector is governed by the board, subject to the policy adopted by the board, and liable for tax to support the board. It is clear and undeniable that the city board of education is elected in full compliance with the "one man, one vote" principle.

Indeed, as they must, plaintiffs concede the election of the city board of education is valid. However, plaintiffs claim that the election of the city board of education is also an election of the governing board of the Santa Barbara elementary school district and that the *latter* election violates the "one man, one vote" principle because the votes of nonresident electors dilute the votes of the electors residing in the Santa Barbara elementary school district. There is no basis in law or fact to support this claim. There is a single city board of education which is elected in a single election by qualified resident electors. This single city board of education, by virtue of section 1222, (see fn. 18, *ante*) is the governing board of the Santa Barbara elementary school district. [FN21] The city board of education, which is elected in accordance with section 1224 (see fn. 17 *ante*) is designated by the Legislature in section 1222 to govern the Santa Barbara elementary school district.

> FN21 See test accompanying footnotes 15 and 16, *ante*.

Thus, it is abundantly clear that the election of the city board of education is a single election of a single board. The real claim advanced by plaintiffs is that they, the resident voters, taxpayers and parents within the Santa Barbara elementary school district are entitled to be governed by an independent school board, comprised of members who reside within the district and elected solely by voters who reside in the district. The United States Supreme Court has held to the contrary. In *Sailors* v. *Board of Education* (1966) 387 U.S. 105, 108, 110-111 [18 L.Ed.2d 650, 653, 655, 87 S.Ct. 1549], the high court held that there is no constitutional right to elect members of boards of education: "We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.

... [¶] Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. At least as respects nonlegislative ***346** officers, a State can appoint local officials or elect them or combine the elective and appointive system as was done here. ... For while there was an election here for the local school board, no constitutional complaint is raised respecting that election. Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy."

The principles announced in *Sailors* were recently applied in California in *O'Keefe v. Atascadero County Sanitation Dist.* (1971) 21 Cal.App.3d 719 [98 Cal.Rptr. 878] to a factual situation so closely analogous to the facts in this case that we regard that case as highly persuasive authority. In *O'Keefe* the residents of the Atascadero sanitation district, which was located in San Luis Obispo County, challenged the procedure by which the directors of the sanitation district were selected. The county is divided into five districts for the purpose of electing the board of supervisors. The sanitation district was located wholly within the boundaries of one of the five supervisorial districts. The population within the sanitation district was approximately 10 percent of the county population. By virtue of state law, the directors of the sanitation district were the board of supervisors. Since the residents of the sanitation district lived wholly within one supervisorial district, they were able to vote for only one director, while the other nonresident voters elected the other four directors of the sanitation district. The sanitation district residents claimed that their votes were diluted and debased by the votes of electors who resided outside the sanitation district but within the county.

The court concluded, however, that the directors of the sanitation district were not elected but designated by the Legislature and that the election of a board of supervisors was a single election of a single board. "The board of directors of a county sanitation district is not elected. Rather, the members of such board are designated in Health and Safety Code section 4730. The composition of the board is determined by the location of the district in relation to other political subdivisions within the county. ... [FN4] [¶] Since the board of directors is not chosen by election, the 'one man, one vote' principle is not applicable .... Appellant argues that the principle nevertheless is applicable under the facts alleged, ***347** because the county board of supervisors is elected [fn. omitted] and the members of the board of directors of the Sanitation District are 'in effect elected once removed.' ... [¶] Under section 4730 the members of the board of directors of a sanitation district are chosen by the Legislature, a method expressly sanctioned in *Sailors*." (*O'Keefe v. Atascadero County Sanitation Dist., supra*, 21 Cal.App.3d at pp. 724-726.)

> FN4 "Health and Safety Code section 4730: 'The governing body of a sanitation district is a board of directors of not less than three members. ... If the district includes no territory which is in cities or sanitary districts, then the county board of supervisors is the board of directors of the district.'"

As in *O'Keefe*, the members of the governing board of the Santa Barbara elementary school district are designated by the Legislature. The Legislature in section 1222 (see fn. 21, *ante*, and accompanying text) designates the city board of education to be the governing board of the Santa Barbara elementary school district. This is an entirely proper procedure under *Sailors*. The fact that the city board of education is elected does not somehow constitute an election "once removed" of the governing board of the Santa Barbara elementary school district just as the election of the county board of supervisors did not constitute an election "once removed" of the directors of the sanitation district in *O'Keefe*.

We discern no constitutional infirmity in a system whereby the Legislature designates an elected city board of education to govern a lesser included elementary school district. We hold therefore that the present method of electing members of the Santa Barbara Board of Education is not violative of either the United States Constitution or the California Constitution and is in all respects valid under applicable state law. [FN22]

> FN22 The second cause of action claiming that the system whereby the city board of education is designated to serve as the governing board of the Santa Barbara elementary school district violated the provisions of section 924 has apparently been abandoned, since the trial court made no mention of it and since it has not been urged on appeal. Moreover, section 1222 rather than section 924

> controls where a charter city with a city board of education is involved.

In L.A. 30054 let a peremptory writ of prohibition issue in accordance with the views herein expressed.

In L.A. 30086 the judgment is reversed and the cause is remanded to the trial court with direction to enter judgment in favor of defendants on the first and second stated causes of action set forth in plaintiffs' complaint. ***348**

Petitioners shall recover costs in L.A. 30054 and defendants shall recover costs in L.A. 30086.

Wright, C. J., McComb, J., Tobriner, J., Mosk, J., Clark, J., and Burke, J., [FN*] concurred. ***349**

> FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

Cal.
Santa Barbara Sch. Dist. v. Superior Court
13 Cal.3d 315, 530 P.2d 605, 118 Cal.Rptr. 637

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California Civil Jury Instructions (BAJI)
Spring 2011 Edition

The Committee On California Civil Jury Instructions

Part
2. Evidence and Guides for Its Consideration
D. Burden of Proof and Preponderance of Evidence

BAJI 2.62 Burden of Proof and Clear and Convincing Evidence

[The plaintiff has the burden of proving by clear and convincing evidence all of the facts necessary to establish:

_____.]

"Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence.

You should consider all of the evidence bearing upon every issue regardless of who produced it.

USE NOTE

This instruction is designed to be used in those limited situations when clear and convincing evidence is required. Civil Code § 3294(a) requires that as a basis for punitive damages, malice, oppression or fraud must be established by clear and convincing evidence. In defamation and false light invasion of privacy cases, where public matters are implicated, "New York Times malice" must be proved by clear and convincing evidence. See the comment to BAJI 7.04.

In punitive damage cases, BAJI 14.71 and 14.72.1 spell out that malice, oppression or fraud must be proved by clear and convincing evidence. The trial judge can simply delete the first bracketed paragraph and give the remainder of this instruction immediately after 14.71 or 14.72.1.

In defamation and false light cases, it is recommended that the first paragraph be used and that "New York Times malice" be spelled out (BAJI 7.04, element 3 and BAJI 7.22, element 4a).

The burden to establish a waiver of rights under a commercial contract is on the party claiming waiver, to prove it by clear and convincing evidence. (DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd. (2d Dist.1994) 30 Cal.App.4th 54, 60, 35 Cal.Rptr.2d 515, 518 (cases cited).)

COMMENT

BAJI 2.62 is based on Civil Code § 3294(a) and language derived from **Sheehan v. Sullivan (1899) 126 Cal. 189, 193, 58 P. 543, 544** and In re Angelia, P. (1981) 28 Cal.3d 908, 919, 171 Cal.Rptr. 637, 643, 623 P.2d 198, 204.

See People v. Caruso (1968) 68 Cal.2d 183, 190, 65 Cal.Rptr. 336, 341, 436 P.2d 336, 341; Lillian, F. v. Superior Court (1st Dist.1984) 160 Cal.App.3d 314, 320, 206 Cal.Rptr. 603, 606; United Professional Planning, Inc. v. Superior Court (4th Dist.1960) 9 Cal.App.3d 377, 386–387, 88 Cal.Rptr. 551, 555–557 and In re Terry, D. (3d Dist.1978) 83 Cal.App.3d 890, 899, 148 Cal.Rptr. 221, 226. See also In re David, C. (5th Dist.1984) 152 Cal.App.3d 1189, 1208, 200 Cal.Rptr. 115, 126, which set forth a summary of the language used in prior opinions: " 'Clear and convincing' evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind."

BAJI 2.62 is worded to define "clear and convincing evidence" as requiring a higher standard than "preponderance of the evidence," but a lower one than "beyond a reasonable doubt." (See Evidence Code § 502.)

See also 1 Witkin, Cal. Evidence (4th ed. 2000) Burden of Proof and Presumptions, §§ 38–39. (Cf. Addington v. Texas (1979) 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329, on remand 588 S.W.2d 569.)

West's Key Number Digest

West's Key Number Digest, Evidence 596(1)
West's Key Number Digest, Trial 194
West's Key Number Digest, Trial 205
West's Key Number Digest, Trial 206
West's Key Number Digest, Trial 234(7)
West's Key Number Digest, Trial 237

Legal Encyclopedias

C.J.S., Evidence §§ 1299 to 1308

C.J.S., Evidence §§ 1310 to 1311

C.J.S., Evidence §§ 1315 to 1317

C.J.S., Trial §§ 526 to 528

C.J.S., Trial §§ 530 to 538

C.J.S., Trial §§ 563 to 564

C.J.S., Trial § 566

C.J.S., Trial § 586

C.J.S., Trial § 623

C.J.S., Trial §§ 629 to 630

C.J.S., Trial §§ 642 to 646

CA BAJI 2.62

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FINANCING SCHOOL FACILITIES IN CALIFORNIA

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October 25, 2006

Executive Summary

California's system of school facility finance is best described as a partnership between the state and local school districts. The state provides districts with financial support for new school construction and modernization projects through the School Facility Program (SFP), which was established in 1998. The SFP represented a major change in the way the state financed school facilities and was designed to simplify the overall structure of the state's schools facilities program and create a more transparent and equitable funding mechanism. Under the program, new school construction projects are funded on a 50/50 state and local matching basis while modernization projects are funded on a 60/40 basis. Although the program has gone through numerous changes since 1998, the basic structure of the SFP is still in place today. Since 1998, voters in California have approved three statewide bond issues to fund the School Facility Program and are scheduled to vote on a fourth this November. The three bond issues that have passed provided K-12 public schools with $28.1 billion in state funding for school facility needs. If approved by voters in November of this year, Proposition 1D, the Kindergarten-University Public Education Facilities Bond Act of 2006, will provide an additional $7.3 billion in state funding. Local school districts finance their share of school construction and modernization project costs primarily with revenue raised through local general obligation bond elections. Since 1998, those local bond elections have provided school districts with an additional $36 billion to finance school facility improvements.

This study provides a comprehensive review of California's system of school facility finance. In so doing, it attempts to answer five broad questions related to the way California finances its school facility needs: (1) How has the level of school facility funding changed over time and how does it compare to the level of funding in other states; (2) How is the level of school facility funding distributed across school districts; (3) What are the primary causes of inequities in school facility funding across districts; (4) Is facility funding reaching those districts with the greatest facility needs; and (5) How do charter schools obtain funding for school facilities and what are the special issues related to charter school facility finance? This report attempts to answer those questions by reviewing the history of school facility finance in California, documenting California's current system of school facility finance, and examining the level and distribution of school facility funding since 1998.

School Facility Funding has Increased Dramatically in Recent Years

Since the passage of Proposition 1A in 1998, California's system of school facility finance has become more streamlined and the level of support for K-12 school facilities, both state and local, has increased dramatically. As noted above, since 1998 voters have approved $28.1 billion in statewide general obligation bonds and an additional $36 billion in local general obligation bonds to support school construction and modernization projects throughout the state. Prior to 1998, spending per pupil on school

facilities in California lagged behind the rest of the nation and even further behind states with similar enrollment growth trends. Since 1998, the level of spending has surpassed the national average and is now comparable to the level found in other states with similar enrollment growth rates.

There are Wide Disparities in School Facility Funding across Districts

Revenue per pupil for school construction and modernization varies widely across districts. For example, in unified school districts the difference between the 75th and 25th percentiles of facility revenue per pupil (total revenue raised over the period 1998-2005 divided by student enrollment) is over $10,000. Similar disparities in facility funding exist among elementary and high school districts. Part of the variation across districts in facility funding is due to differences in need, another part is due to differences in the ability to pay for school facility projects. In terms of need, districts with higher enrollment growth rates and those that have not invested heavily in school facilities in the recent past tend to have substantially higher revenue per pupil. In terms of ability to pay, districts with higher property wealth also tend to have substantially higher revenue per pupil. In particular, disparities in school facility funding across districts is systematically related to the assessed value of property within districts. Districts with higher assessed value per pupil are able to raise substantially more revenue through local general obligation bond issues and consequently, tend to have substantially higher total revenue per pupil. There also appears to be little relationship between facility revenue and the ethnic composition of districts. If anything, districts with higher concentrations of minority students tend to have higher facility revenue per pupil.

Critically Overcrowded Schools Serve a Disproportionate Number of Disadvantage and Minority Students -- They Also Have Higher Facility Funding

In 2002 the state legislature created the Critically Overcrowded Schools (COS) program to help direct state aid towards districts with the greatest facility needs. The program was funded with $4.1 billion of Proposition 47 and 55 bond revenue. To qualify for COS program funding, a school must have a student density that is double the density recommended by the California Department of Education. Critically overcrowded schools contain a disproportionate number of disadvantaged and minority students. For example, among schools classified as critically overcrowded the average percentage of students qualifying for free or reduced price lunch is 77%. Among all other schools that percentage is only 45%. Districts that contain critically overcrowded schools also tend to have higher facility revenue per pupil. For example, among the 42 districts that contain critically overcrowded schools, local bond revenue between 1998 and the present averaged $5,722 per pupil and total revenue per pupil averaged $11,323. In other districts local bond revenue averaged $3,825 and total revenue averaged $9,061. Thus, on average, total revenue per pupil is approximately 25% higher in districts that contain critically

overcrowded schools. Los Angeles Unified, which contains nearly 50% of all critically overcrowded schools, has experienced a particularly large increase in facility funding. In that district, total facility funding per pupil is more than twice the statewide average.

The Facility Dilemma Facing Charter Schools Is Improving but Challenges Still Remain

Since charter schools were first introduced in California in 1993, they have faced significant facility challenges. During the 1990's there were few facility funding options available to charter schools and most charter schools, particularly non-conversion charter schools, faced significant barriers to obtaining adequate school facilities. The facility dilemma facing charter schools began to improve in 2000 when California voters passed Proposition 39. Prior to the passage of Proposition 39, districts were only required to make facilities available to charter schools if such facilities were not currently being used for instructional or administrative purposes or if such facilities had not been historically used for rental purposes. Under the charter school provisions contained in Proposition 39, it became the legal responsibility of school districts to make every reasonable effort to house charter school students in facilities that were essentially equivalent to those used to house other students within the district. Thus, Proposition 39 substantially increased the responsibility of school districts to provide charter schools with adequate school facilities. In recent years a number of grant and loan programs have also been established to help charter schools obtain adequate school facilities. For example, Propositions 47 and 55 contained $400 million in funding for charter school facilities. Proposition 1D, if approved by voters in November of this year, would provide an additional $500 million in facility funding for charter schools.

Although the facility dilemma facing charter schools has improved in recent years, challenges still remain. For example, according to a 2002 survey of charter schools conducted by the Rand Corporation, 62% of all charter schools surveyed stated they were struggling to finance their school facility needs. In addition, a 2005 survey of charter schools conducted by EdSource revealed that among the 135 charter schools that submitted Proposition 39 requests for facilities to their districts, 53 or 39% of schools reported they did not receive satisfactory facilities in response to their initial request or through continued negotiations.

1. Introduction

On November 7th of this year, Californians will vote on Proposition 1D, the Kindergarten-University Public Education Facilities Bond Act of 2006. If approved by voters, the Act would provide K-12 public schools with $7.3 billion in funding for new school construction and modernization projects. It would also represent the fourth such bond issue approved by voters since 1998. Collectively, those four bond issues will have provided $35.4 billion in state funding for K-12 school facility needs. Local school districts have also been active in securing funding for school facilities: since 1998, local voters have approved over $36 billion in local general obligation bond issues to finance school facility improvements.

California's willingness to support school construction and modernization efforts comes in the wake of several reports which concluded that underinvestment in school facilities had resulted in a school facilities crisis. For example, according to a 1995 report conducted by the U.S. General Accounting Office, the condition of California's school facilities ranked among the worst in the nation.[1] Furthermore, as recently as 2001, the Legislative Analyst's Office (LAO) reported that about one-third of all schoolchildren in California attended an overcrowded school or one in need of modernization.[2] To correct those problems, the LAO estimated that state and local governments would need to invest $30 billion in the near term and significantly more in the future to meet California's ongoing school facility needs.

The purpose of this report is to provide a comprehensive review of California's system of school facility finance. Section 2 reviews the history of school facility finance in California. That chapter borrows liberally from Cohen (1999) who provides an excellent account of how California's system of school facility finance has evolved over time. Unfortunately, that account ends in 1999, just as the state was adopting a new system of school facility finance. Thus, section 2 builds on the work of Cohen by providing a review of California's system of school facility finance from the origins of California statehood to the present. Following that review, section 3 examines how school facility funding in California has changed over time and how it compares to the level of funding in other states. That section shows that school facility spending in California has fluctuated dramatically over time. It also shows that until recently, spending per pupil on school facilities in California lagged behind the rest of the nation. For example, between 1988 and 1996, California spent about 20% less on school facilities than the rest of the nation. The gap in school facility spending was even larger if one compares California to other states with similar enrollment growth trends, such as Texas and Florida. However, since 1998, spending per pupil on school facilities in California has increased dramatically. Facility spending in California now

[1] U.S. General Accounting Office (2005).
[2] Legislative Analyst's Office (2001).

exceeds the national average and it is as high, if not higher, than the level of spending observed in states with similar enrollment growth.

After providing an historical overview of California's system of school facility finance, Section 4 turns to describing the current system. In particular, the section provides an overview of the School Facility Program which was established in 1998 with the enactment of AB 50 and the passage of Proposition 1A. The section documents the various steps school districts must follow to access state funds for new school construction and modernization projects. It also provides an overview of the Critically Overcrowded School Facilities (COS) program which was established in 2002 to address several concerns about the equitable distribution of Proposition 1A funds.

Sections 5, 6 and 7 turn to examining the level and distribution of school facility funding since the enactment of the School Facility Program in 1998. Section 5 shows that since 1998 state and local governments in California have raised over $71 billion to fund new school construction and modernization projects throughout the state. State and local general obligation bond revenue accounts for 84% of that revenue with local general obligation bonds being the largest single source of revenue (approximately 53%). The section also shows that school facility funding varies widely across districts. The causes of these wide disparities in funding are the focus of section 6. That section shows that part of the variation in facility funding can be explained by differences in need. Districts with higher enrollment growth, and districts that have not invested heavily in school infrastructure in the recent past, tend to have significantly higher levels of facility funding. However, section 6 also finds that disparities arise from differences across districts in the ability to pay for new school construction and modernization projects. In particular, school facility funding varies systematically with district property wealth. High-wealth districts tend to have significantly higher local general obligation bond revenue per pupil and consequently, significantly higher total revenue per pupil.

Section 7 examines whether districts with the most critical facility needs receive higher levels of facility funding. To date, no comprehensive measure of school facility need is available in California. However, there are two objective measures of need that can be examined: schools that are classified by the California Department of Education as critically overcrowded and schools that operate on a multi-track year-round calendar. Section 7 begins by examining how the characteristics of critically overcrowded and multi-track schools differ from other schools. It then examines how facility funding in districts that contain critically overcrowded or multi-track schools compares to other districts. The section reveals that, compared to other schools, those that are classified as critically overcrowded or operate on a multi-track calendar, tend have significantly higher proportions of disadvantaged and minority students. It also shows that districts that contain critically overcrowded schools tend to receive significantly higher facility funding, particularly Los Angeles Unified.

Section 8 examines school facility funding for charter schools in California. It begins by discussing the unique facility challenges charter schools face and how those challenges have affected their ability to obtain adequate facilities. The section then documents how Proposition 39 impacted the ability of charter schools to obtain adequate school facilities. It also discusses the various sources of revenue that have recently become available to charter schools to finance their school facility needs. The report concludes by summarizing the main findings presented in Chapters 2 through 8 and linking those findings to research reports that have recommended various changes to the current system of school facility finance in California.

2. A History of School Facility Finance

California's system of school facility finance has evolved slowly over time. Up until the mid-1900's, school construction and modernization projects were funded almost entirely with local revenue. State involvement in the system emerged with the creation of the State Allocation Board in 1947, which was directed by the state legislature to allocate state funds for school construction and renovation. Since that time, school facility finance has evolved from a locally-financed system to a system best described as a partnership between local school districts and the state. This section describes the history of school facility finance in California and documents the various programs that have been used to finance K-12 facilities.

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 State Constitution of 1849 mandated the state legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement."[3] The Constitution set aside large tracts of public land for the creation of public schools and mandated 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.[4] In 1879, the California State Constitution was revised and school districts were granted the authority to issue bonds to finance school construction projects, subject to the approval of two-thirds of voters within the district. Local bonds were repaid with property tax revenue raised from a special tax assessment on all property located within a school district. School districts could issue additional bonds up to their debt capacity level which was set at 1.25 percent of assessed value for elementary and secondary districts and 2.5 percent for unified districts. From that

[3] Constitution of the State of California, 1849. Text obtained from California State Archives: http://www.ss.ca.gov/archives/level3_const1849txt.html

[4] During the early years of California statehood, state aid for education was limited to support for teacher salaries. Districts built schools when they could raise enough tax revenue or when civic-minded residents volunteered their time and resources to build a school. (Falk, 1968).

time forward, proceeds from local school bond elections became the primary source of local revenue for school construction projects.

The state first became involved in school construction and renovation activities in 1933, following the Long Beach earthquake. The earthquake, which struck just hours after classes ended on March 10th 1933, caused numerous school buildings in Long Beach and surrounding communities to collapse and provoked "public outcry over the vulnerability of school building to earthquake-related damage."[5] In response, the state legislature passed the Field Act on April 10th 1933.[6] The Act mandated the Division of the State Architecture (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.[7] 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 updated overtime, the basic structure of the Act is still in place today.[8]

The post-World War II baby boom caused a surge in student enrollment in California which in turn led to a public school "building boom" starting in the late 1940's.[9] From the late 1940's to the early 1960's, schools were built in record numbers.[10] In the late 1940's the State Legislature recognized that school districts would need financial assistance to house California's growing number of students. In response, the state legislature established the State Allocation Board in 1947 and charged the board with allocating state funds for the construction and renovation of schools.[11] In addition to its allocation role, the Board is also responsible for establishing policies and regulations for the programs it oversees.

In 1949, the Legislature passed the State School Building Aid Law which was designed to provide assistance to school districts for the construction and acquisition of new school facilities. To secure funding for the new program, California's first statewide school bond initiative, Proposition 1, was placed on the November 1949 statewide ballot and approved by voters. The proposition authorized the sale of $250 million of state bonds for the purpose of providing school districts with funds for new school construction and improvement. The State School Building Aid Law of 1949 was set up as a loan program. To enter the program, a district had to be bonded to capacity and obtain voter approval to

[5] Heumann (2002), p. 9.
[6] The Field Act was named after California State assembly member Charles Field who spearheaded the legislation.
[7] State of California Seismic Safety Commission (December 2004), p. 6.
[8] For a complete description of the Field Act see the California education code section 17280-17317.
[9] From 1950 to 1960, student enrollment in California doubled from a total enrollment of 1,689,425 in 1950 to a total enrollment of 3,368,101 in 1960. (California Department of Education, Enrollment Reports for 1950 – 1979).
[10] According to EdSource, most of California's schools were built during this period.
[11] The State Allocation Board consists of ten members: the Director of the Department of Finance, the Director of the Department of General Services, the Superintendent of Public School Construction, one person designated by the Governor, three State Senator, and three State Assembly Members.

accept a state loan. Districts were then required to maintain a property tax rate equivalent to the rate necessary to finance general obligation bonds at the district's debt capacity level. After 30 years, if the state loan was not fully repaid, any outstanding balance was forgiven.[12]

For the next two decades, California's system of school facility finance remained relatively unchanged: school districts provided most of the funds for new school construction and the state provided limited assistance via loans for the State School Building Aid program.[13] Between 1952 and 1966, California voters approved 7 statewide school bond initiatives, which provided $1.54 billion for the State School Building Aid program. Throughout this period, state aid was limited to loans that could only be used for the purpose of new school construction. School districts wishing to renovate or modernize existing school facilities had to finance those renovations with local revenue.

By the late 1960's, many of California's schools were over 20 years old and in need of renovation. Recognizing this need, the state legislature in 1966 declared that it was in the "interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities."[14] In 1968, state assistance for the modernization of urban schools built prior to 1943 was added to the education code.[15] Further changes to California's system of school facility finance began to emerge in the early 1970's. In response to damage caused by the 1971 San Fernando earthquake, the legislature designed a new program to provide funding for earthquake-damaged schools and schools that were not in compliance with the Field Act. The new program was funded with revenue from two statewide school bond initiatives: the School Building and Earthquake Reconstruction and Replacement Bond Law of 1972, which provided $350 million for the construction and renovation of schools, and the State School Building Aid and Earthquake Reconstruction and Replacement Bond Act of 1974, which provided an additional $150 million.[16] While most state aid to school districts remained in the form of loans, the new legislation included provisions to forgive loans for school districts that had reached their bonding capacity and also provided grants to school districts that would otherwise not be eligible for funding. Thus, by the early 1970's, state involvement in school facility finance had expanded to include aid for school renovation and modernization and the role of the state had begun to change from one of a primary lender to one of a grantor.

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[12] California Education Code, State School Building Aid Law, 1949, Section 15738.

[13] The State School Building Aid Law of 1949 was updated when the State School Building Aid Law of 1952 was passed by the state legislature. While more detailed, the new program retained the same basic structure of its predecessor.

[14] California Education Code, School Housing Aid for Rehabilitation and Replacement of Structurally Inadequate School Facilities, Section 16312.

[15] California Education Code, Urban School Construction Aid Law of 1968, Sections 16700-16734.

[16] In November 1972, California voters also passed Proposition 9, the Bond Vote for Structurally Unsafe School Buildings. The proposition allows districts to issue general obligation bonds, subject to the approval of a simple majority of voters (rather than a super-majority) for the purpose of repairing or replacing structurally-unsafe school buildings.

In 1976, the state legislature enacted the Leroy Greene State School Building Lease-Purchase Law. The law established a fund to provide loans to school districts for both new construction and modernization. Eligibility for new construction funding was based on housing capacity. To qualify, a district had to demonstrate that existing seating capacity was insufficient to house either current student enrollments or anticipated student enrollments based on a 5-year projection of enrollment growth. To qualify for modernization funding, a school building had to be at least 30 years old, or in the case of a portable classroom, at least 20 years old. The new program also established a system of "priority points" for the allocation of state funds. In the original 1976 legislation these priority points depended on factors such as the number of unhoused students, projected enrollment growth rates and the degree of renovations necessary.[17] Although the Lease-Purchase Program was signed into law in 1976, funding for the new program was never approved by voters: in June of 1976 voters rejected a $200 million state bond initiative that was designed to fund the new program. At first, the lack of funding appeared to be of little consequence. Between 1970 and 1982, student enrollment in California's public schools was declining and hence there was little demand for state funds. Things began to change, however, following the passage of Proposition 13 in June of 1978.

The passage of Proposition 13 shifted the primary responsibility for financing new school construction and modernization from local school districts to the state. By prohibiting property tax overrides to fund local general obligation bonds, Proposition 13 eliminated the primary source of local revenue for new school construction and modernization. Consequently, in the aftermath of Proposition 13, school districts were forced to turn to the state to meet their school facility needs. The state legislature responded to Proposition 13 by turning the Lease-Purchase Program into what essentially amounted to a grant program. School districts that chose to participate entered into a 40-year lease-purchase agreement with the state, with payments of $1 per project per year. Although school districts were expected to contribute up to 10% of a project's cost, many school districts could no longer raise the required match and thus asked the State to fund their entire projects.[18] The increased demand for state funding, coupled with the fact that in June of 1978, voters once again rejected a statewide bond initiative designed to fund the Lease-Purchase Program, led to a large shortfall in funding for new school construction and modernization.

The state legislature responded to the need for school facility funding in a number of ways. First, in 1982 and then again 1984, it placed school bond initiatives on the statewide ballot. Voters approved both initiatives, which collectively provided the Lease-Purchase Program with $950 million. Second, in 1982, the state legislature passed legislation allowing school districts, for a ten year period, to pay just 1

[17] Cohen (1999), p. 12.
[18] Cohen (1999), p. 13.

percent of the costs of state-funded projects rather than the 10 percent required in the original 1976 Lease-Purchase Program legislation. Third, in 1982, the state also implemented the Mello-Roos Community Facilities District Act. The Act allows school districts to create Community Facility Districts (CFD's) within the boundaries of the district to fund new school construction. The owners of land within the boundaries of a CFD are assessed a special tax to finance new construction projects. The tax must be approved by two-thirds of the voters within the proposed CFD or, when the district has fewer than 12 property owners, by majority vote of the owners.[19] Fourth, to reduce the costs associated with school construction projects, in 1983 the state legislature passed legislation (Chapter 498, Statutes of 1983) giving districts a financial incentive to place students into a multi-track year-round education (MTYRE) program. Districts that participated in the program were eligible for a grant of up to 10 percent of the cost that would have been necessary to build a new facility to house the students.[20]

By the mid-1980's however, it became apparent that these measures were not sufficient to meet the growing facility needs of school districts. Student enrollment in California had begun to grow again in the 1980's, creating further pressure on the state for increased facility funding. In addition, both the federal and California state governments passed asbestos removal legislation in 1986, which led to an increase in the number of applications for modernization and rehabilitation funding. By June of 1986, the State Allocation Board had received applications for funding that totaled nearly $2.3 billion.[21] To meet the ever-growing demands on the Lease-Purchase Program, the state legislature placed seven statewide bond initiatives on the ballot between 1986 and 1992. All seven of the bond initiatives passed, providing the state with an additional $6.8 billion for school facility projects. Voters and the state legislature also passed a number of new programs designed to reinstate the authority of local school districts to raise revenue for new school construction and modernization. In June of 1986, voters passed Proposition 46, which reestablished the authority of local school districts to issue general obligation bonds, subject to the approval of two-thirds of the voters within a district. Also in 1986, the state legislature approved AB 2926 which authorized school districts to directly impose developer fees to finance new school construction. Developer fees could only be imposed on new industrial, commercial, or residential development. Furthermore, the maximum fee a district could impose was set at $1.50 per square foot for residential development and $0.25 per square foot for commercial and industrial development.[22]

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[19] Rivasplata (1997), p. 42.
[20] Cohen (1999), p. 14.
[21] Cohen (1999), p. 15.
[22] While fees were capped in theory, some school districts managed to find ways around the caps. In particular, several school districts argued that the caps only applied to the school district rate. As a result, they petitioned their city and/or county governments to impose additional fees, leading to a total fee that exceeded the cap of $1.50 per square foot for residential property and $0.25 per square foot for commercial property. The cases led to three

As the 1990's unfolded, demands on the Lease-Purchase Program continued to mount. Attempts to conserve limited resources led the state legislature and the State Allocation Board to implement numerous changes to the program. In 1990, a new priority system was implemented, based on when an application was received and a complex set of additional priorities. One year later, the priority system was changed to include six priorities of funding. A district was given priority 1 funding status if the district covered at least 50% of the project costs with local funds and had a substantial enrollment in year-round schooling programs. Priority 2 status was granted if the district requested 100% state funding of the project and had a substantial enrollment in year-round schooling programs. Districts received lower priority if they did not have substantial enrollment growth, were not requesting funds for a year-round schooling project, or were requesting 100% funding from the state. Due to the limited funding available from the state, the vast majority of projects that received funding were either priority 1 or priority 2 projects. In 1996 the priority system was changed yet again to take into consideration new class-size reduction legislation and finally, in 1997, the priority system was replaced altogether by a first-come first-served system.[23] Despite these numerous changes to the Lease-Purchase Program and the passage of another $3 billion statewide bond initiative in March 1996, the backlog of projects faced by the State Allocation Board remained at approximately $6 billion at the end of 1996.

In November 1998, the legislature passed SB 50, The Leroy Greene School Facilities Act of 1998. The legislation replaced the Lease-Purchase Program of 1976 with a new program called the School Facility Program (SFP). The new state program was funded with bond revenue from Proposition 1A, a $9.2 billion state bond initiative approved by voters in November of 1998. The initiative provided $6.8 billion for K-12 school construction projects over a four-year period. Specifically, the bond included $2.9 billion for new school construction, $2.1 billion for modernization, $1 billion for districts facing financial hardship, and $700 million for class-size reduction projects. The School Facilities Program represents a major change in the way the state finances school facilities. Under the new program, state funding for new school construction and modernization is provided in the form of per-pupil grants with supplemental grants available for site development, site acquisition and other site-specific costs.[24] New school construction projects are funded on a 50/50 state and local matching basis while modernization projects are funded on a 60/40 state and local matching basis.[25] The SFP also implemented numerous reforms to the old Lease-Purchase program that were designed to stream-line the application process, simplify the overall structure of the state school facilities program, and create a more transparent and

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separate law suits in which the courts ultimately upheld the practice. The three decisions collectively became known as the Mira-Hart-Murietta decisions.

[23] Cohen (1999), p. 17.

[24] School Facility Program Handbook (February 2006), p. 1.

[25] Under the original 1998 legislation, modernization projects were funded on an 80/20 state and local matching basis. The matching rate was reduced to a 60/40 state and local basis following the passage of AB 16 in 2002.

equitable funding mechanism. In his excellent review of the history of school facility finance in California and the role of the State Allocation Board, Joel Cohen notes:

> Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.[26]

The basic structure of the School Facilities Program remains in place to this day and is discussed in detail in section 4.

While the Leroy Greene School Facilities Act of 1998 (henceforth SB 50) was designed to streamline and simplify the process for allocating state funds, it wasn't long before the new program was called into question. In March of 2000, the *Godinez v. Davis* lawsuit was filed in the Los Angeles Superior Court on behalf of a group of parents and students from the Los Angeles Unified School District. The suit contended that the method by which Proposition 1A funds were allocated discriminated against large urban school districts. Among other things, the lawsuit called into question the priority point system the State Allocation Board (SAB) used to allocate Proposition 1A funding. The original SB 50 legislation required the SAB develop a priority point system, based upon the percentage of currently and projected unhoused pupils, to allocate state funds once those funds became insufficient to fund the applications submitted by school districts.[27] In 1999, AB 562 was enacted to make the timing of implementing priority points more specific. The new legislation required that the system of priority points must be implemented once either of the following two conditions were met: (1) funds necessary to fund approved applications exceed funds available, or 2) only $300 million remains in new construction funding.[28] In the case of *Godinez v. Davis*, the plaintiffs argued (among other things) that in large urban districts, it took longer to file a formal application for reasons beyond the direct control of the district and since the SAB allocates funds only to those districts that have filed a formal application for funding, the funding process put large urban districts at a disadvantage. In essence the plaintiffs argued that, even though large urban districts were "high need" districts, and thus should receive a high priority for state funding, the state funding process placed such districts at a disadvantage since it took them longer to file applications. In August of 2000, Judge Yaffe, the presiding judge in the *Godinez* case, ruled that the State

[26] Cohen (1999), p. 1.
[27] Up until the point where state funds became insufficient, Proposition 1A funds were allocated on a first-come first-served basis.
[28] Coalition for Adequate School Housing, News Archives, July 11, 2001.

Allocation Board was not apportioning funding in accordance with AB 562 and ordered the SAB to develop rules that would provide greater funding opportunities for high need districts such as LA Unified.[29]

In response to the court's ruling, the SAB adopted a revised priority system in December of 2000. The new system set aside $450 million of remaining Proposition 1A funding for high-priority urban districts until August of 2002. It also required that the remaining $1 billion in new construction funding be released on a quarterly rather than monthly basis at the rate of approximately $125 million per quarter and that those funds be allocated to projects based upon their priority point order. As a result of these changes, the *Godinez* plaintiffs agreed not to pursue any further litigation.

Around the same time *Godinez v. Davis* was first making its way through the courts, plaintiffs in *Williams v. State of California* filed a class-action lawsuit in the San Francisco Superior Court. Among other things, the plaintiffs argued that the state failed to provide students with equal access to safe and decent school facilities, particularly low-income students and students of color. Specifically, the plaintiffs argued that disadvantaged and minority students were more likely to be housed in facilities with "extremely hot or cold classrooms, unkempt or inadequate bathroom facilities, and unrepaired and hazardous facilities such as broken windows, vermin infestations, leaky roofs, or mold."[30] In August of 2004, the state agreed to a settlement. As part of that settlement, the state agreed to dedicate $800 million in funding for emergency repairs for low-performing schools.[31]

To address some of the problems encountered after the first round of funding for the new School Facility Program, the state legislature enacted AB 16 in April of 2002. AB 16 added to the SFP a new program called the Critically Overcrowded Schools program. The program allowed districts with schools that were classified by the California Department of Education as critically overcrowded to reserve state funding for new school construction for a period of up to four years. Thus, the Critically Overcrowded Schools program allowed districts such as LA Unified, who argued it took them longer to file applications for funding, to reserve state funds prior to submitting an application for funding.[32] AB 16 also put before voters two new statewide school bond issues: Proposition 47 and Proposition 55. The two bond issues, which were respectively approved by voters in November of 2002 and March of 2004, provided an additional $21.4 billion in state funding for school facility projects. The bonds include $4.8 billion to

[29] Building Industry Association of Southern California, February, 2001.
[30] Pastor and Reed (2005), p. 22.
[31] The settlement requires the state to allocate $800 million to a new School Facilities Emergency Repair Account which will reimburse districts for emergency repairs. Only schools ranked in the bottom three deciles of the 2003 Academic Performance Index (API) are eligible for emergency repair funding.
[32] Other significant elements of AB 16 were the creation of a Joint-Use Program and the elimination of priority points for new school construction and modernization projects. In essence, the need for a priority point system was eliminated by the creation of the Critically Overcrowded Schools program.

fund previously-approved projects that did not receive Proposition 1A funding, $4.1 billion for the Critically Overcrowded Schools program, $3.7 billion for school modernization projects and $8.8 billion for new school construction.[33]

In addition to passing two of California's largest school bond initiatives, in November of 2000 California voters also passed Proposition 39, the Smaller Classes, Safer Schools and Financial Accountability Act. The Act allowed a district to issue local general obligation bonds subject to the approval of 55 percent of voters (rather than two-thirds voters), conditional on several accountability requirements. Specifically, the Act required school districts to set up a citizen's oversight committee to ensure bond proceeds were allocated properly. It also required school districts provide a list of specific projects to be funded with any bond revenue and to conduct annual performance and financial audits. Districts seeking to avoid these requirements may still ask their electorate to approve a bond issue but any such bonds must be approved by a two-thirds majority rather than a 55 percent majority.

Proposition 39 also had ramifications for School Facility Improvement Districts (SFID's) which consist of a portion of the territory within a school district. Similar to school districts, SFID's can issue general obligation bonds for new school construction subject to the approval of voters within the SFID. The state legislature authorized the establishment of SFID's in 1998 to address a problem faced by districts that currently had a Mello-Roos Community Facility District (CFD) within their boundaries.[34] Since voters within a CFD were already being taxed to support school facilities within their CFD, the passage of a district-wide general obligation bond issue would lead to the double taxation of residents within the CFD.[35] Up until 2002, the issuance of general obligation bonds by a SFID required the approval of two-thirds of voters within the SFID. Senate Bill 1129, which became effective on January 1st of 2002, permits SFID's to hold a Proposition 39 school bond election and therefore issue bonds subject to the approval of 55 percent of voters.

Looking towards the future, the Office of Public School Construction estimates that even after all Proposition 47 and 55 funds are depleted by 2007, the state will need an additional $6.8 billion to fund its portion of new school construction and modernization projects.[36] As a result, the state legislature enacted AB 127, the Kindergarten-University Public Education Facilities Bond Act of 2006, in May of 2006. The legislation provides for a new statewide bond issue of $10.4 billion dollars to fund K-12 and higher education facility needs. If approved by voters in November of 2006, the legislation would provide K-12

[33] de Alth and Rueben (2005).
[34] SFID's were first established by the state legislature in 1994 but no SFID's were formed in response to the legislation. Subsequent legislation in 1996 and 1997 broadened the potential use of SFID's and the first SFID was established in 1998. As of June of 2006, 25 SFID elections had been held of which 13 were successful.
[35] SFID's can only be established in districts that currently have a CDF within in their boundaries and they may not include the territory of the CFD.
[36] Notes from the Assembly Education Committee, Education Infrastructure Hearing #1, January 25, 2006.

public schools with $1.9 billion in funding for new school construction project, $3.3 billion for modernization projects, $500 million for charter school facilities, $1 billion for severely overcrowded schools, $500 million for career technical facilities, and $129 million for other projects.

3. Changes in School Facility Funding over Time and Comparisons to other States

As the previous section makes clear, California's system of school facility finance has changed frequently over time. This section documents how the numerous changes to the system, and the cyclical nature of statewide school bond initiatives, have affected the level of school facility funding over time. It also documents how spending on school infrastructure in California compares to the rest of the nation and individual states with similar enrollment growth trends.

Figure 1 documents the historical trend in per-pupil school facility spending in California from 1960 to the present.[37] Spending levels are adjusted for inflation with 2005 as the base year. As the figure makes clear, facility spending has fluctuated quite dramatically over time. From 1960 to 1982, spending per pupil on school facilities declined rather continuously, with brief upswings that correspond to the passage of statewide school bond initiatives. Part of this decline is directly related to changing demographics and a natural pattern of infrastructure finance; i.e., periods of heavy investment in infrastructure reduce the need for further investment for a period of time. For example, the decline in school facility spending that occurred during the 1960's was a natural response to the large investment in school facilities that was made during the "building boom" of the late 1940's and 1950's. Similarly, the decline in spending that occurred during the 1970's was partly due to the decline in student enrollment that occurred over that time period.

Figure 1 also illustrates that California experienced a dramatic decline in facility spending between 1978 and 1984, the period during which Proposition 13 prohibited local school districts from issuing local general obligation bonds. Since 1984, facility spending has risen rather continuously, with brief declines occurring when little or no statewide bond revenue was made available. The rise in spending that occurred during the 1980's was primarily driven by three factors: the rise in student enrollments that began in the early 1980's, the passage of Proposition 46, which reestablished the authority of local school districts to issue general obligation bonds, and the passage of AB 2926 which authorized school districts to levy developer fees. The dramatic rise in facility spending that has occurred since 1996 is primarily due to the passage of large statewide bond initiatives in 1996, 1998, 2002 and

[37] Data on school facility spending over time was obtained from annual school finance records prepared by the California Department of Education. Specifically, data from 1960 to 1986 comes from annual reports on the "Financial Transactions Concerning School Districts in California," while the data from 1987 to 2005 comes from J200 and SACS accounting records prepared by the California Department of Education.

2004, and the passage of Proposition 39 in 2000 which lowered the vote requirement on local general obligation bonds to 55%.

The impact of recent increases in school facility spending is further illustrated in Tables 1 and 2, which document the history of K-12 state and local general obligation bond initiatives in California. Table 1 summarizes the history of statewide school bond initiatives. For each time period listed in column 1, columns 2 through 6 give the number of bond issues proposed, the number of bond issues that passed, the total amount proposed, and the total amount that was ultimately passed measured in both current and constant 2005 dollars.[38] As the table reveals, 26 statewide bond elections have been held in California since 1949 and of those, all but three have been approved by voters. Measured in constant 2005 dollars, these bond issues have collectively made available over $56 billion for school construction and modernization. Of this $56 billion, $33.52 billion, or nearly 60%, was approved by voters since 1996 and $23.3 billion, or approximately 41%, was approved by voters since 2001 and the passage of Propositions 47 and 55.

Table 2 provides the same information as Table 1 for local school bond initiatives. Since 1986, California school districts have held a total of 1,215 local general obligation bond initiatives. Of those, 760, or approximately 63%, have been approved by voters. Measured in constant 2005 dollars, these local initiatives have raised over $51 billion for school construction and modernization projects. Table 2 also makes apparent the impact of Proposition 39 on the passage rate of local school bond initiatives and the amount raised through these initiatives. Between 1996 and 2000, the period just prior to the passage of Proposition 39, approximately 63% of local school bond initiatives were approved by voters. In contrast, between 2001 and 2005, voters approved 80% of the bond issues they were asked to support. The amount raised locally through bond initiatives has also increased dramatically since the passage of Proposition 39. In the five year period just prior to the passage of Proposition 39, voters approved $16.4 billion in local general obligation bonds (measured in constant 2005 dollars) in 282 elections. In the five year period following the passage of the proposition, voters have approved over $28 billion in local G.O. bonds in 285 elections. In fact, approximately 55% of all local bond revenue approved by voters since 1986 has been approved since the passage of Proposition 39.

Although school facility spending has risen dramatically since 1996, it remained below the national average until 2000. Figure 2 compares school facility spending per pupil in California with spending per pupil in the rest of the U.S between 1988 and 2004.[39] Spending levels are adjusted for

[38] Information on statewide school bond initiatives was obtained from the Los Angeles County Law Library's, "Guide to California Ballot Propositions." http://lalaw.lib.ca.us/ballot.html.

[39] Data on K-12 School facility spending in the U.S. comes from the U.S. Department of Commerce, Bureau of the Census, Annual Survey of Local Government Finances. Annual facility spending is measured as the sum of total

inflation, with 2005 as the base year. On average, between 1988 and 1996 California spent about 20% less on school facilities per pupil than the rest of the nation. With the passage of two large statewide bond initiatives in 1996 and 1998, spending per pupil in California began to rise relative to the rest of the nation. Since 2000, and the passage of Propositions 39, 47, and 55, school facility spending in California has risen above the national average.

Table 3 compares school facility spending in California with spending in other states between 1988 and 2004. For each time period listed in column 1, columns 2 through 8 respectively give the average level of facility spending in the U.S. except California, in California, and in five other states with enrollment growth similar to California. All spending levels listed in Table 3 are adjusted for inflation and measured in constant 2005 dollars. As the table reveals, prior to 2001, California consistently spent less per pupil on K-12 school facilities than other states with similar enrollment growth trends.[40] For example, between 1988 and 1992 California spent about $100 less per pupil on school facilities than Texas. Similarly, between 1997 and 2000 it spent about $260 less per pupil than Texas. Between 2001 and 2004, however, spending per pupil on school facilities in California had reached or exceeded the spending levels observed in other states with similar enrollment growth. Nevertheless, despite the recent up-tick in spending, spending per pupil on school facilities over the entire time period still lags behind the level observed in other states. For example, between 1988 and 2004, spending per pupil in California averaged $818 while it averaged $1,172 in Florida and $963 in Texas.

In summary, between 1960 and 1982, spending per pupil on school facilities in California was consistently falling. Although spending per pupil has risen ever since, throughout the 1980's and 1990's it remained below the national average, and even farther below the level found in states with similar enrollment growth trends. Since 1998, spending per pupil in California has increased dramatically so that spending on school facilities in California is now higher than the national average and it is as high, if not slightly higher, than the spending levels observed in states with similar enrollment growth trends. With that in mind, the next section turns to a discussion of California's current system of school facility finance.

4. The Current System of School Facility Finance

California's current system of school facility finance is best described as a partnership between the state and local school districts. The state provides funding for school facility projects via the School Facility Program (SFP), which is subdivided into five major programs: the New Construction Program,

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state and local capital expenditures. Prior to 1988, data on capital outlays by state and local governments for K-12 education were not reported in a consistent manner. As a result, the analysis begins in 1988.

[40] Carroll, et. al. (2005) show that between 1990 and 2000 California also spent less per pupil on school facilities than the four other most populous states, namely, Texas, New York, Florida, and Illinois.

the Modernization Program, the Critically Overcrowded Schools (COS) program, the Joint-Use Projects program, and the Charter School Facilities program. With the exception of the Modernization Program, all these state programs are funded on a 50/50 state and local matching basis. The Modernization Program is funded on a 60/40 state and local matching basis. Local school districts finance their share of school facility projects with funding obtained primarily from two sources: local general obligation bonds and developer fees. Thus, the current system is designed to be a collaboration between the state and local school districts, with each entity providing a portion of the costs associated with any given new construction or modernization project. This section describes the major programs the state uses to fund school facility projects and delineates the various steps school districts must complete to obtain state funding.[41]

Overview of the SFP Program

In order to obtain funding for new school construction and modernization projects, school districts must interact with, and 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 (DSA) of the Department of General Services, the School Facilities Planning Division (SFPD) of the California Department of Education, the Department of Toxic Substance Control (DTSA), and the Department of Industrial Relations (DIR).

As mentioned previously, the SAB is responsible for approving all state apportionments for new school construction and modernization projects. The board meets monthly to review applications for funding, act on appeals, and implement policies associated with the School Facility Program. 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 DSA has been involved in the process of school construction since the Field Act was first passed in 1933. The primary responsibility of the agency is to review and approve construction plans and to ensure those plans are in compliance with the Field Act. DSA approval is required for all new school construction and modernization projects. The primary role of the School Facilities Planning Division (SFPD) is to approve school district site and construction plans. The agency reviews the "educational adequacy" of proposed projects to ensure they meet the needs of students and teachers. The agency also works with the Department of Toxic Substance Control to review any potential environmental hazards associated with a project. The final agency involved in the process is the Department of Industrial Relations (DIR). The primary responsibility of this agency is to ensure that

[41] This section focuses on the New Construction Program, the Modernization Program, the Critically Overcrowded Schools program and the Joint-Use Projects program. Section 8 contains a detailed description of the Charter School Facilities program.

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 the DIR.

The School Facility Program provides funding for two major types of school construction projects: new school construction and modernization. The process of obtaining state funding 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 DSA and the SFPD. 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 (50% of new school construction projects costs and 40% of modernization project costs), and evidence that it has entered into a binding contract for at least 50% of the proposed construction project. Figure 3 illustrates the steps districts must follow to obtain funding for either new school construction or modernization projects.[42]

As noted in the previous section, the SFP was designed to stream-line the application process and simplify the overall structure of the state's school facilities program. According to the Office of Public School Construction (OPSC), most funding applications can now be reviewed and receive final approval from the State Allocation Board within 60 to 90 days. Relative to the old Lease-Purchase Program, the SFP also involves less project oversight by the state and allows districts considerable independence in determining the scope of any new school construction or modernization project. However, this greater independence comes at a potential cost; all state grants are considered to be full and final apportionments by the SAB. Thus, districts are now responsible for any cost overruns or unanticipated costs associated with a project. Under the old Lease-Purchase Program, some of those costs were reimbursed by the state.

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 (HSAA) basis. Establishing eligibility involves three steps. In the first step, form SAB 50-01 is used to compute a five-year enrollment projection based on current and historical enrollment figures. Districts that are

[42] Figure 3 is adopted from a schematic created by Abel et. al. (Winter 2004/2005), p. 11.

experiencing rapid residential growth may supplement these enrollment projections using information on the number of unhoused students that are anticipated as a result of new residential development. To do so, the district must submit to the OPSC either approved or tentative valid tract maps that show the size and density of proposed new developments.[43] In the second step, form SAB 50-02 is used to compute a district's existing capacity based on an inventory of the number of existing classrooms (or space that could be used as a classroom). Pupil capacity is computed by multiplying the number of existing classroom spaces by a load factor of 25 for elementary classrooms, 27 for middle and high school classrooms, 13 for non-severely disabled classrooms, and 9 for severely disabled classrooms. In the third step, form SAB 50-03 is used to determine eligibility. Existing pupil capacity is subtracted from projected enrollment to determine the number (if any) of unhoused students. The number of students computed to be unhoused represents the district's eligibility for new school construction grants.

The eligibility requirements for modernization projects are less complex. 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 HSAA-wide basis used for new school construction eligibility.

Applying for Funding

New school construction projects are funded by the state on a per-pupil 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.[44] The current grant amounts per unhoused pupil are listed in Table 4. 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.[45] Site acquisition and development grants are made on a 50/50 state and local matching basis.

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

[43] In 2005, the legislature enacted AB 491 which provides districts with an alternative enrollment projection. Districts that do not meet the standard criteria for eligibility may still be eligible for funding if they meet the following two criteria: (1) the district has two or more school sites with a pupil population density greater than 115 pupils per acre for elementary schools and 90 pupils per acre for middle and high schools, and (2) the district can not meet its housing needs at the impacted site after considering all existing eligibility mechanisms.

[44] The SAB uses the Class B construction Cost Index to annually update the per-pupil grants.

[45] Other supplemental grants include: fire code requirements, energy efficiency, special education, multi-level construction, project assistance, replacement with multi-story construction, geographic location, small size projects, new school projects, urban locations. For a detailed description of these supplemental grants see the School Facility Handbook.

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,[46] 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.

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**.** Table 5 lists the per-pupil grant amounts for modernization projects. 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% match for project costs, and approval from the DIR for the district's Labor Compliance Program.

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. If financial hardship status is granted, districts can receive up to 100% 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;[47] and (3) evidence of financial inability to contribute the required local matching funds.[48]

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

[47] Specifically, a district must provide evidence of at least one of the following: existing debt is at least 60% of the district's bonding capacity, total bonding capacity is less than $5 million, or evidence that the district held a successful school bond election in the past two years.

[48] The OPSC conducts an analysis of a district's financial status to determine whether it is eligible for financial hardship status. The process involves a number of worksheets used to determine a district's share (if any) of project costs.

The Critically Overcrowded School Facilities Program

The Critically Overcrowded School (COS) Facilities program was created in 2002 with the passage of AB 16. The program allows districts with critically overcrowded school sites to reserve funding for new school construction projects for a period of up to four years. At the end of the four year period, districts with an approved COS project must convert their COS project into a new school construction project and meet all funding criteria set forth by the SFP's New Construction Program. Unlike the New Construction Program, the COS program allows eligible districts to reserve funding for new school construction prior to having identified a site for the construction and prior to having bid-ready construction plans.[49] Thus, the COS programs gives qualifying districts substantially more time to prepare an application for funding.

To qualify as critically overcrowded, elementary schools must have a student density greater than 115 students per acre while middle and high schools must have a student density greater than 90 students per acre.[50] The California Department of Education is responsible for maintaining a list of critically overcrowded schools. Once a school within a district has been placed on the CDE's critically overcrowded schools list, the district can file an Application for Preliminary Apportionment (a reservation of funds application) with the OPSC. Any project funded under the COS program must meet the following conditions: (1) relieve overcrowding by increasing the capacity of the district, (2) identify a minimum of 75% of the proposed student occupancy for the project as coming from schools listed on the CDE critically overcrowded schools list, and (3) be located within a one-mile radius of an elementary school that qualifies as critically overcrowded or within a three-mile radius of a secondary school that qualifies as critically overcrowded. Figure 4 illustrates the steps qualified districts must follow to obtain funding under the COS program.[51]

Joint-Use Projects

The legislature enacted the Joint-Use Program with the passage of AB 16 in April of 2002. The program was further amended with the passage of SB 15 in 2003. The program allows districts to enter into a cost-sharing agreement for specified projects with a qualified joint-use partner.[52] In so doing, the program allows districts to consider projects that they may not have been able to afford otherwise. One hundred million dollars of Proposition 47 and 55 funding has been made available for the program. The

[49] Abel et. al. (Winter 2004/2005), p. 10.
[50] These densities represent 200% of the CDE standard (recommended site density). Prior to implementing the program, the state legislature considered other density factors such as 150% or 125% of the CDE standard. Of course, the lower the density factor, the higher the number of schools that would qualify for the COS program. PolicyLink and MALDEF (2005) have suggested the density factor be reduced to allow more districts to participate in the COS program. This issue and other issues related the COS program are discussed in section 9.
[51] Figure 2 is taken from a schematic created by Abel et. al. (Winter 2004/2005), p. 10.
[52] Qualified joint-use partners include: governmental agencies, institutions of higher education, and nonprofit organizations.

Joint-Use Program funds two types of projects, commonly referred to as Type I and Type II. Type I joint-use projects must be part of a qualified new construction project that increases the size and/or cost of a project beyond what is necessary for school use of a multipurpose room, a gymnasium, a childcare facility, a library or a teacher education facility. Type II joint-use projects can be part of a modernization project or a stand-alone project that will add or expand a multipurpose room, gymnasium, childcare facility, library, or a teacher education facility.

Funding for joint-use projects is made on a 50/50 state and local matching basis. The joint-use partner is responsible for contributing a minimum of 25% of project costs and thus a local school district is responsible for a maximum of 25% of project costs.[53] Furthermore, if a school district passed a general obligation bond issue for the explicit purpose of building a joint-use project, the district may contribute the full 50% of the required local match. Similar to other programs administered under the SFP, all applications for joint-use projects must be accompanied by supporting documentation that demonstrates the district has received DSA and CDE approval for its construction plans. Apportionments for joint-use projects are made on a first-come first-served basis.

5. The Size and Distribution of School Facility Spending Since 1998

As previously noted, California's current system of school facility finance was established in 1998 with the passage of SB 50. Since that time, revenue from state and local general obligation bond issues, developer fees and several other revenue sources have provided approximately $71 billion for new school construction and renovation projects throughout the state. This section describes the level and distribution of school facility funding in California since 1998.

The Level of School Facility Funding

Table 6 summarizes the total revenue made available to local school districts for new school construction and modernization projects from 1998 to the present. The first column of Table 6 lists five sources of revenue for school facility projects. The second column lists the aggregate revenue raised from each of those sources, while the third column lists the percentage of total revenue derived from each source.[54] As Table 6 reveals, most revenue for new school construction and modernization comes from three sources: local general obligation bonds, state aid and developer fees. Collectively, these three sources of revenue represent 93% of all funding available to school districts.[55] School districts also

[53] Unlike other SFP programs, financial hardship assistance is not available for joint-use projects. If a district is unable to fund some portion of its share of project costs, the state apportionment is reduced.

[54] All revenue figures reported in Table 6 are adjusted for inflation using the producer price index and measured in constant 2005 dollars.

[55] Information on the revenue raised through successful local general obligation bond elections was obtained from EdSource and represents all revenue raised from 1998 through June 2006. Information on state apportionments to

receive revenue from successful Mello-Roos and School Facility Improvement District elections (approximately 1% of total funding) and from various "other" revenue sources (approximately 6% of total funding). These "other" sources include: Certificates of Participation (COP's) which represent short-term debt, revenue from the sale or lease of land and/or buildings, federal aid, and other smaller sources of revenue.[56] Between 1998 and June of 2006 school districts raised $38.4 billion for new school construction and modernization projects through local general obligation bond issues. Over the same time period, the state apportioned $21.9 billion to local school districts. That amount represents nearly all of the revenue from Proposition 1A and Proposition 47 and approximately 56% of the revenue from Proposition 55.

Two other studies examined the composition of revenue for new school construction and renovation projects in California during the period just prior to the passage of SB 50. A comparison of the results reported in those studies with the results reported in Table 6 suggests that since 1998, local school districts have relied more heavily on local general obligation bonds to finance school construction and modernization projects. Specifically, Brunner and Rueben (2001) examined the composition of revenue for new school construction and modernization between 1992 and 1998. Over that time period, local general obligation bonds constituted approximately 32% of total facility funding, state aid constituted approximately 30% and developer fees constituted approximately 11%. Similarly, the Legislative Analyst's Office (2001) examined the composition of revenue between 1987 and 1998 and found that local general bonds constituted about 32% of total funding, while state aid and developer fees respectively constituted about 40% and 17%. Thus, in recent years, the share of revenue coming from local general obligation bonds has risen from approximately 32% to 53%. This increased reliance on G.O. bond revenue is most likely attributable to the passage of Proposition 39 in November of 2000.

Table 7 summarizes the three largest sources of revenue in terms of average revenue per pupil. The per-pupil revenue figures reported in the table represent the sum of all revenue raised between 1998 and the present (measured in constant 2005 dollars) divided by the average enrollment over the time period. Local general obligation bond revenue averaged $4,051 in unified districts, $3,293 in elementary districts, and $6,951 in high school districts. Furthermore, these averages mask considerable variation in the number of districts that held a successful G.O. bond election and the amount of revenue raised by those school districts that held a successful election. For example, 57% of unified school districts (188

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school districts was obtained from the Office of Public School Construction and represents all apportionments made from 1998 through June 2006 (the data of the last SAB meeting). Finally, information on developer fee revenue was obtained from yearly school district accounting records (J-200 and SACS) provided by the California Department of Education and represents all revenue raised from 1998-99 through 2004-05.

[56] Information on successful Mello-Roos and SFID elections was obtained from EdSource while information on "other" sources of revenue was obtained from yearly school district accounting records prepared by the California Department of Education.

out of 331) held at least one successful G.O. bond election over the time period and among those districts the average amount raised per pupil was $7,134. Similarly, 30% (166 out of 548) of elementary districts and 58% (48 out of 83) of high school districts held a successful G.O. bond election over the time period and among those districts the average amount raised was $10,872 for elementary districts and $12,019 for high school districts. One district in particular stands out, namely Los Angeles Unified. Between 2002 and 2005, voters in LA Unified approved $11.2 billion in local general obligation bonds or, on a per-pupil basis, $15,114. Overall, local G.O. bond revenue constitutes 42% of total per-pupil funding for unified districts, 40% for elementary districts and 50% for high school districts. Similarly, state aid constitutes 36% of total funding for unified districts, 42% for elementary districts and 34% for high school districts.

The Distribution of School Facility Funding

The averages reported in Table 7 mask wide variations in the distribution of school facility funding across districts. Table 8 illustrates how per-pupil revenue for new school construction and modernization is distributed across school districts. The percentiles listed in the table are weighted by the number of students in each district. For example, 10% of students in unified school districts were enrolled in a district where total revenue per pupil was less than $4,274. For each type of school district, the first row gives the distribution of local general obligation bond revenue per pupil. The second row shows how the distribution changes when state aid per pupil is added to local G.O. bond revenue. Finally, the third row shows the distribution of total revenue per pupil (local G.O. bond revenue plus state aid plus all other sources of revenue). For all three types of school districts, total revenue per pupil at the 75^{th} percentile is more than double that of the 25^{th} percentile. These large disparities are partly due to the distribution of local general obligation bond revenue across districts. For example, in unified school districts, local G.O. bond revenue at the 75^{th} percentile is more than seven times that of the 25^{th} percentile. These large disparities in local bond revenue per pupil are partially offset by state aid and other sources of revenue but large disparities persist across districts.

Of course, part of this variation in school facility funding across districts may simply reflect differences in need. For example, student enrollment might be increasing rapidly in some districts and declining or remaining stable in others. Similarly, some districts might have invested heavily in new school construction and modernization in the period just prior to 1998 and thus have little need for further investment in school facilities. On the other hand, the variation in school facility funding across districts might also reflect differences in the ability to fund new school facility projects. High-income districts and districts with high property wealth, for example, might be more willing and able to finance new school construction and modernization projects. The next section addresses these possibilities by examining how variation in school facility funding is related to measures of need and measures of ability to pay.

6. Explaining the Variation in School Facility Funding

The need for school facility funding arises primarily for two reasons: (1) capacity constraints due to enrollment growth and (2) modernization/renovation needs due to the aging of the existing capital stock. Consequently, this section begins by examining how variation in school facility funding across districts is related to enrollment growth and prior investment in school infrastructure.

Need and the Distribution of School Facility Funding

Table 9 illustrates how per-pupil facility funding is related to the growth rate of district enrollment between 1998-99 and 2004-05. For each type of school district, the table shows how revenue per pupil is distributed when school districts are separated into quintiles of enrollment growth.[57] The quintiles listed in the table are weighted by student enrollment so that each quintile contains 20% of the total student enrollment in the state. For example, 20% of students in unified school districts were enrolled in a district where enrollment growth was less than 0.8% (the first quintile). Similarly, 20% of students in unified districts were enrolled in a district where enrollment growth was greater than 18% (the fifth quintile).

As Table 9 reveals, school facility funding appears to be positively related to enrollment growth. In unified districts, total revenue per pupil averaged $7,960 among districts in the first quintile of enrollment growth while it average $14,725 among districts in the fifth quintile. Elementary and high school districts with the highest enrollment growth rates also tend to have higher total revenue per pupil. Table 9 also reveals that the distribution of total revenue per pupil is primarily driven by the distribution of state aid. For each type of school district, state G.O. bond apportionments increase steadily across the quintiles of enrollment growth. Of course the strong positive relationship between enrollment growth and state aid is to be expected, given that funding for new school construction is based primarily on current and projected enrollment growth. What is slightly more surprising is the relationship between local general obligation bond revenue and enrollment growth. One would expect local G.O. bond revenue to be positively related to enrollment growth as districts with high enrollment growth rates should have greater need for school facility funding. However, Table 9 reveals that local G.O. bond revenue is only weakly related to enrollment growth. In particular, among unified and elementary districts there appears to be no systematic relationship between local bond revenue per pupil and enrollment growth. Districts in the first quintile of enrollment growth raise about the same amount of revenue through local G.O. bond

[57] For the remainder of this study per-pupil revenue is measured as the sum of all revenue raised between 1998 and the present (measured in constant 2005 dollars) divided by the average enrollment over the time period.

elections as districts in the fifth quintile.[58] Among high school districts, there is a large difference in local bond revenue between the first and second quintiles of enrollment growth but little difference in revenue between the remaining quintiles.

Table 10 illustrates how revenue per pupil is related to an alternative measure of need, namely the amount districts spent in previous years on school construction and modernization projects. For each type of district, the table shows how revenue per pupil is distributed across school districts when districts are separated into quintiles of previous investment in school facilities. The quintiles are once again weighted by student enrollment. Previous school facility investment is measured as the sum of all school facility spending within a district from 1969 to 1997, adjusted for depreciation. Specifically, for each school district, the aggregate value of school facility investment over the 29 year period spanning 1969 to 1997 was calculated as:

$$K_{1998} = \sum_{j=0}^{28} I_j \cdot (1-\delta)^{28-j} ,$$

where K_{1998} denotes the aggregate value of school facility investment as of 1998, I_j denotes school facility investment in year *j* (1969, 1970 …, 1997), measured in constant 2005 dollars, and δ is the geometric rate of depreciation.[59] Data on aggregate investment for various years were obtained from the *Annual Report of Financial Transactions Concerning School Districts of California*, prepared by the California State Controller. The nominal investment data were converted into constant 2005 dollars using the producer price index.[60]

As Table 10 illustrates, among unified districts there appears to be no systematic relationship between prior investment in school facilities and current facility revenue per pupil. Local G.O. bond revenue, state aid and total revenue per pupil are relatively evenly distributed across quintiles.[61] In contrast, among elementary and high school districts there appears to be a negative relationship between

[58] The relatively large spike in the 3rd quintile of local G.O. bond revenue for unified districts is driven by Los Angeles Unified which makes up the bulk of that quintile. Excluding Los Angeles Unified from the analysis causes local G.O. bond revenue in the 3rd quintile too fall to levels similar to other quintiles.

[59] Holtz-Eakin (1993) reports an estimate of the depreciation rate of non-residential state and local capital of 4.1%. I use his depreciation rate to calculate the aggregate value of school facility investment in prior years.

[60] Between 1969 and 1998, a substantial number of California's elementary and high school districts were consolidated into unified districts. For those school districts, I used school district consolidation records, obtained from the California Department of Education, to identify the elementary schools and high schools that merged to form a new unified school district. For the years prior to the formation of a unified school district, I measured total capital outlay for that school district as the sum of all capital outlays made by the elementary and high school districts that eventually consolidated to form the unified district. Using that procedure I was able to obtain a complete time series of annual investment flows for all school districts currently operating in California.

[61] Los Angeles Unified falls in the 2nd quintile. Omitting Los Angeles Unified from the analysis does not affect the pattern of results reported in Table 10.

prior investment and total revenue per pupil. For example, total revenue per pupil averaged $9,941 among elementary districts located in the first quintile (the lowest quintile of prior investment) while it averaged only $6,579 among districts located in the fifth quintile (the highest quintile of prior investment). Similarly, local bond revenue averaged $4,656 among elementary districts located in the first quintile while it averaged only $2,467 among districts in the fifth quintile. High school districts exhibit a similar pattern, with districts in the first quintile of previous investment having substantially higher local bond revenue and total revenue than districts in the fifth quintile.[62]

Collectively, Tables 9 and 10 suggest that at least part of the variation in school facility funding across districts can be explained by differences in need: in general, districts with higher enrollment growth rates and districts with lower levels of prior investment in school facilities tend to have higher revenue per pupil. Nevertheless, given the large disparities in school facility funding reported in Table 8, it seems likely that other factors are also driving the distribution of funding across districts. The next part of this section therefore focuses on examining how the distribution of school facility funding is related to measures of ability to pay for new school construction and modernization projects.

Ability to Pay and the Distribution of School Facility Funding

Table 11 shows the distribution of revenue per pupil when districts are separated based on quintiles of median household income.[63] The quintiles are once again weighted by student enrollment. As Table 11 reveals, there appears to be a relatively strong positive relationship between median household income and revenue per pupil: districts with the highest median household income tend to have substantially higher revenue per pupil.[64] For all three types of school districts, total revenue per pupil among districts in the fifth quintile is double that of districts in the first quintile. For example, total revenue per pupil averaged $10,196 among high school districts in the lowest quintile of income while it averaged $24,186 among districts in the highest quintile of income. The distribution of total revenue per pupil in Table 11 is primarily driven by the distribution of local bond revenue. In particular, local G.O. bond revenue appears to increase rather continuously with district income. Furthermore, compared to districts in the first through fourth quintiles, districts in the fifth quintile (those districts with the highest median income) appear to raise substantially more revenue through local G.O. bond elections.

[62] I also examined the sensitivity of these results to the time span chosen to measure prior investment expenditures. In particular, I also created a measure of prior investment that only included investment from 1986 (when local general obligation bonds were reinstated) to 1998. Using this alternative measure of prior investment I obtained results that were qualitatively similar to those reported in Table 10.

[63] Data on the median household income of districts comes from special school district tabulations of the 2000 census prepared by the U.S. Census Bureau and the National Center for Education Statistics.

[64] Los Angeles Unified falls in the 1st quintile. Omitting Los Angeles Unified from the analysis does not affect the pattern of results reported in Table 11.

Table 11 provides another explanation for the large disparities in school facility funding across districts, namely a willingness among high-income districts to spend more on school facilities than low-income districts. In particular, high-income districts tend to have higher total revenue per pupil primarily because they tend to raise more money through local general obligation bond elections than low-income districts. However, income is only one of the factors that affects the willingness and ability of districts to fund new school construction and modernization projects. The other primary factor is district property wealth.

As noted in section 2, the passage of Proposition 46 in 1986 reinstated the authority of school districts to issue general obligation bonds, subject to the approval of voters within a district. General obligation bonds are repaid with revenue raised from property tax overrides that remain in effect until the bonds are fully repaid. The reliance upon the local property tax to finance general obligation bonds leads naturally to the question of how differences across districts in assessed value per pupil affect the ability and willingness of districts to finance school facility spending locally. Specifically, property wealth affects the ability of school districts to raise revenue through local general obligation bond elections in two distinct ways. First, school districts can only issue bonds up to their debt capacity limit, which is set at 1.25 percent of assessed value for elementary and secondary districts and 2.5 percent for unified school districts. Thus, debt limits may place an institutional constraint on the amount of bond revenue low-assessed value districts can raise. While debt capacity limits may not be binding for unified and high school districts, which tend to have relatively high limits, an analysis by the Coalition for Adequate School Housing (CASH) suggests that these debt capacity limits may significantly constrain the ability of many elementary districts from raising funds through general obligation bond issues (CASH 1997). Second, differences across districts in assessed value per pupil directly affect the tax-price of school facility spending. The tax-price is the additional property tax burden a homeowner faces when spending per pupil is increased by one dollar. That tax-price equals the assessed value of a voter's home divided by the district's total assessed value per pupil. Note that the tax-price of school facility spending is inversely related to the assessed value of property within a district. Thus, all else equal, districts with higher assessed value per pupil face a lower tax-price which may manifest itself in a higher demand for school facility spending.[65]

[65] Note that the tax-price of school spending may differ across school districts for other reasons as well. First, holding the assessed value of property within districts constant, districts with lower enrollments will have a higher assessed value per pupil and thus face a lower tax-price. Second, all else equal, residents in districts with a higher percentage of nonresidential property will face a lower tax-price since some of the additional tax burden necessary to finance an increase in facility spending is shifted to the owners of nonresidential property.

Table 12 documents the relationship between school facility funding and assessed value per pupil.[66] For each type of school district, the table shows how revenue per pupil varies when school districts are separated into quintiles of assessed value per pupil. Once again, these quintiles are weighted by student enrollment. As Table 12 reveals, there appears to be a strong positive relationship between local bond revenue per pupil and assessed value per pupil.[67] Compared to districts in the lowest quintile of assessed value per pupil, districts in the highest quintile have substantially higher local bond revenue. In unified and high school districts it is more than three times higher and in elementary school districts is more than ten times higher.

Table 12 also reveals a strong positive relationship between assessed value per pupil and total revenue per pupil. Total revenue per pupil averaged $6,889 among unified districts in the first quintile while it averaged $13,507 among districts in the fifth quintile. Similar disparities in total revenue per pupil across quintiles exist for elementary and high school districts. The wide variation in total revenue per pupil across districts is directly related to the variation in local bond revenue. For example, in unified districts, the $4,482 difference in average local G.O. bond revenue between the first and fifth quintiles explains approximately 68% of the difference in total revenue. In elementary and high school districts, differences in local bond revenue across quintiles account for an even greater proportion of the difference in total revenue.

Finally, it is worthwhile to note that the averages reported in Table 12 mask considerable variation across quintiles in the amount of revenue raised by school districts that held successful general obligation bond elections. For example, of the 79 unified districts with assessed value per pupil of $337,000 or less (those in the first quintile), 40 held a successful bond election and among those districts bond revenue per pupil averaged just $4,002 per pupil. In contrast, among the 78 unified districts with assessed value per pupil of $800,000 or more, 45 held a successful bond election and among those districts bond revenue per pupil averaged $11,328. The relationship between assessed value per pupil and local bond revenue per pupil is illustrated more clearly in Figure 5. The vertical axis gives local G.O. bond revenue per pupil for those districts that held a successful local bond election between 1998 and June of 2006, while the horizontal axis gives the assessed value per pupil in those districts. Figure 5 illustrates a strong positive relationship between assessed value per pupil and local bond revenue per

[66] To my knowledge, no state agency collects information on the assessed value of property within school districts. Consequently, I contacted the Auditor Controller's office of each county in California and requested the data. Fifty out of 58 counties responded to my request and provided data on assessed value by school district for the 2005-06 tax year. With the exception of San Joaquin County, all of the counties that did not respond were small rural counties. As a result, while the data on assessed value covers only 50 out of California's 58 counties, it covers 95% of all school districts and 97.5% of all students.

[67] Los Angeles Unified falls in the 3rd quintile. The results reported in Table 12 are essentially unchanged if Los Angeles Unified is omitted from the analysis.

pupil. Furthermore, as Table 13 reveals, this strong positive relationship between assessed value and local bond revenue translates directly into a strong positive relationship between assessed value and total revenue per pupil.

Table 13 examines how school facility funding is related to one final measure of interest to policy makers, namely the percentage of students that are nonwhite. Specifically, Table 13 shows how revenue per pupil is distributed across school districts when districts are separated into quintiles based on the percentage of nonwhite students.[68] In contrast to the results reported in Tables 11 and 12, there appears to be no systematic relationship between revenue per pupil and the percentage of nonwhite students. For all three types of school districts, local bond revenue, state aid, and total revenue per pupil are all rather equally distributed across quintiles.[69]

Taken together, Tables 9 through 12 and Figure 5 suggest that disparities in school facility funding across districts are related to both measures of need, such as enrollment growth and prior facility investment, and measures of willingness and ability pay, such as income and assessed value per pupil. To determine which factors are most important in explaining the level of school facility funding, the remainder of this section turns to multivariate regression analysis.

Regression Results

Column one of Table 14 reports coefficient estimates from a model designed to explain total revenue per pupil. The dependent variable is the log of total facility funding per pupil over the period 1998 to the present. The primary independent variables are: the log of assessed value per pupil, the log of median household income, the growth rate of enrollment between 1998 and 2005, the log of previous facility investment expenditures per pupil, and the fraction of students that are nonwhite in a district. The model also includes the log of district enrollment to account for economies of scale and size effects on the level of school facility funding and two indicator variables: one that takes the value of unity if a district is an elementary district and the other that takes the value of unity if a district is a high school district. These final two variables are included in the model to allow the level of school facility funding to differ across types of districts.

The coefficient estimates reported in column one of Table 14 are generally consistent with expectations. For example, the estimated coefficients on the log of assessed value per pupil and enrollment growth are both positive and statistically significant at the 5% level. Similarly, the coefficient on previous investment is negative and statistically significant, indicating that districts that invested

[68] Data on the ethnic composition of school districts in 2004-05 comes from reports prepared by the California Department of Education. The quintiles reported in Table 13 are weighted by district enrollment.
[69] Los Angeles Unified is located in the 4th quintile. Omitting Los Angeles Unified from the analysis causes local G.O. bond revenue in the 4th quintile to fall considerably from $4,644 to $2,862.

heavily in the past in school facilities tend to receive lower facility funding. Furthermore, consistent with the results reported in Table 11, the fraction of minority students in a district appears to have little effect on the level of school facility funding. Turning to the interpretation of the estimated coefficients, the results indicate that a 1% increase in assessed value per pupil results in approximately a 0.56% increase in total revenue per pupil while a 1% increase in enrollment growth results in approximately a 0.76% increase in total revenue per pupil. District size also appears to have a large effect on revenue per pupil. Specifically, the results indicate that a 1% increase in district enrollment leads to approximately a 0.53% increase in total revenue per pupil. Of course, the enrollment variable most likely captures the fact that elementary districts, which tend to be much smaller, also tend to receive lower funding per pupil.

The second column of Table 14 reports coefficient estimates from a model designed to explain local G.O. bond revenue per pupil. The dependent variable in the model is the log of local bond revenue per pupil. The independent variables are the same variables used to explain total revenue per pupil. Districts that failed to raise any revenue through local bond elections are excluded from the sample. As a result, the sample size falls from 904 observations to 386 (the number of districts that held a successful bond election between 1998 and June of 2006). In column 2, the estimated coefficients on the log of assessed value per pupil and the log of median household income are both positive and statistically significant. Thus, the results indicate that high-wealth and high-income districts tend to raise more revenue through local bond elections. The estimated coefficient on the log of assessed value per pupil is also quite large. Specifically, the results indicate that a 1% increase in assessed value per pupil leads to approximately a 0.77% increase in bond revenue per pupil. In fact, assessed value per pupil is responsible for explaining most of the variation in local bond revenue. Specifically, a simple regression of the log of local bond revenue per pupil on the log of assessed value per pupil yields an R-Squared of 0.52, indicating that 52% of the variation in local bond revenue is explained by this variable alone. Furthermore, as seen by the R-Squared reported in column 2, adding all the other explanatory variables to the model only increases the R-Squared from 0.52 to 0.57. Several of the other coefficients reported in column 2 are also of interest. For example, the coefficient on percent minority is positive and statistically significant indicating that districts with higher fractions of minority students tend to raise more money through local G.O. bond elections. Similarly, the coefficient on enrollment growth is positive and statistically significant at the 10% level. Note, however, that the magnitude of the estimate coefficient on enrollment growth is small. Thus, consistent with the results reported in Table 9, bond revenue per pupil appears to be only weakly related to enrollment growth.

The final column of Table 14 reports coefficient estimates from a model designed to explain the probability of having a successful local G.O. bond election. In this model, the dependent variable is an indicator variable that takes the value of unity if a district had a successful bond election between 1998

and June of 2006 and zero if it did not. Once again, the independent variables are the same as those used in columns 1 and 2. The model is estimated as a logistic regression. The coefficient on assessed value per pupil is positive and statistically significant indicating that districts with higher assessed value per pupil are more like to hold a successful G.O. bond election. The results also indicate that larger districts and those with a higher percentage of minority students are more likely to hold a successful bond election. In contrast, districts that invested heavily in the past in school infrastructure are less likely to hold a successful bond election. Finally, relative to unified and high school districts, elementary districts are significantly less likely to hold a successful bond election.

The results reported in Table 14 reveal several interesting patterns. First, total revenue per pupil is positively related to assessed value per pupil primarily because assessed value per pupil is the primary determinant of local G.O. bond revenue. Specifically, assessed value per pupil drives both the level of bond revenue raised (conditional on having a successful bond election), and the probability of having a successful bond election. Second, while there is only a weak positive relationship between enrollment growth and local bond revenue per pupil, there is a much stronger positive relationship between total revenue per pupil and enrollment growth. As Table 9 illustrated, this strong positive relationship between total revenue and enrollment growth is driven primarily by the distribution of state aid. Finally, conditional on other factors, there is only a weak positive relationship between total revenue per pupil and district income. High-income districts tend to have higher total revenue per pupil primarily because they raise more revenue through local G.O. bond elections.

To more clearly see how assessed value per pupil, enrollment growth and other factors affect the distribution of total revenue per pupil, Table 15 presents the predicted level of total facility funding per pupil calculated using the coefficient estimates reported in column 1 of Table 14. Specifically, Table 15 shows how moving from the 25th percentile of a given variable to the 75th percentile of that variable affects the level of total facility funding per pupil while holding all other variables at their means. For example, if enrollment growth increased from -8% (the 25th percentile of enrollment growth) to 15% (the 75th percentile) total revenue per pupil would increase from $3,144 to $3,741, or by $597. Similarly, if a district's assessed value changed from $392,052 to 1,130,002 total revenue per pupil would increase by $2,064. As Table 15 reveals, both measures of need and measures of ability to pay appear to be important determinants of the distribution of facility funding across districts. Measures of need such as enrollment growth and previous investment in school facilities have relatively large effects on the distribution of facility funding. In terms of ability to pay, assessed value per pupil appears to play the dominant role in explaining the distribution of facility funding across districts.

To examine the robustness of the results reported in Table 14, I also estimated models based on several alternative specifications. To examine whether the results were sensitive to regional variation in

the demand for school facility spending, I first estimated models that included a set of 11 regional fixed effects. These regional fixed effects control for any unobserved regional variation in the demand for school facility spending. The regions consist of contiguous counties and are described in detail by Betts, Reuben and Danenberg (2000). The inclusion of these regional fixed effects caused the coefficient on assessed value to rise slightly in the total revenue equation and in the probability of holding a successful bond election equation. In general, however, results based on models that included regional fixed effects were qualitatively and quantitatively similar to those reported in Table 14. I also estimated separate regression models for each type of school district (unified, elementary and high school). Results based on those alternative specifications are reported in Tables 1A, 2A, and 3A of the Appendix. Specifically, Table 1A reports results when the total revenue equation is estimated separately for each type of district. Similarly, Tables 2A and 3A report results when the bond revenue equation and the probability of having a successful bond election equation are estimated separately for each type of school district. A brief inspection of the results reported in those tables reveals several interesting patterns. First, for unified and elementary districts, the coefficients on assessed value per pupil reported in Tables 1A, 2A, and 3A are quite similar to those reported in Table 14, suggesting that assessed value has a similar effect on both types of districts. In contrast, for high school districts, the coefficient on assessed value per pupil is statistically insignificant in both the total revenue equation and the probability of having a successful bond election equation, suggesting that assessed value plays a less important role in those districts. However, given the small sample size for high school districts, those results should be interpreted with caution. Table 1A also suggests that income tends to play a more important role in explaining variation in total revenue per pupil across elementary and high school districts, and that enrollment growth tends to play the most important role in explaining variation in total revenue per pupil across high school districts.

7. Critically Overcrowded and Multi-Track Year-Round Schools

The previous section demonstrated that districts with higher enrollment growth and/or lower levels of previous investment in school facilities tend to receive higher levels of facility funding. Thus, districts with greater facility needs appear to receive higher levels of facility funding. On the other hand, it also appears that ability to pay has a relatively large impact on facility funding. Districts with high assessed value per pupil tend to have significantly higher levels of school facility funding. These results raise an important question: do districts with the most critical facility needs receive higher levels of facility funding? While quantifying facility needs is difficult, there are two objective measures of need that can be examined: schools that the California Department of Education (CDE) classifies as critically overcrowded and schools that operate on a multi-track year-round calendar. This section examines how the characteristics of critically overcrowded and multi-track schools differ from other schools. It also

examines how school facility funding in districts that contain critically overcrowded and multi-track schools compares to other districts.

As noted previously, the CDE classifies a school as critically overcrowded if it has a student density that is 200% or more of the CDE's recommended density. For elementary schools, that translates into a density of more than 115 students per acre while for middle and high schools it translates into a density of more than 90 students per acre. The multi-track year-round calendar was introduced in California to help alleviate overcrowding. Multi-track year-round calendars allow schools to increase their seating capacity by 30% or more, by placing students into tracks and then rotating those tracks throughout the year. Thus, at any given point in time, one track is on vacation while the other tracks are attending classes.[70] Currently, approximately 804,000 students attend one of the 751 schools operating on a multi-track year round calendar.[71] Districts that choose to implement a multi-track calendar are eligible for additional operational funding to compensate for the multi-tracking of students. Specifically, the Year Round Grant Program, administered by the State Department of Education, provides additional funding to districts that implement or maintain a year-round multi-track program. Funding is based on the percentage of pupils certified in excess of facility capacity. The amount of the grant increases with the percent of students housed in excess of facility capacity. For example, if 5 to 9 percent of students are housed in excess of facility capacity the maximum grant amount is $824.50 per student in excess of capacity. If 20 to 24 percent of students are housed in excess of facility capacity the maximum grant amount is $1,401.65 per student in excess of capacity.[72] Districts that receive funding under the Year Round Grant program have their new construction eligibility in the SFP program reduced based on the number of pupils for whom they have received funding. Thus, school districts that participate in the program are voluntarily choosing to reduce their eligibility for new school construction funding.

Table 16 shows the percent of students in California that attend critically overcrowded or multi-track schools as of 2004-05.[73] Overall, approximately 16% of students are enrolled in a school that the CDE defines as critically overcrowded, while 22% of students are enrolled in a school that is either critically overcrowded or utilizes a multi-track year-round calendar.[74] As Table 16 reveals, a disproportionate number of nonwhite and low-income students attend critically overcrowded or multi-track schools. For example, while overall 16% of students attend critically overcrowded schools, only 5%

[70] See Oakes (2002) for an excellent discussion of multi-track year-round schooling.
[71] Assembly Education Committee, Education Infrastructure Hearing #1, January 25, 2006.
[72] There grant amount are as of 2005-06. See the California Department of Education website for the latest grant amounts under the Year Round Grant Program.
[73] Table 16 is an update of a table created by Pastor and Reed (2005) who use data from 2002-03.
[74] These calculations were made using data from the California Department of Education on school-level enrollment in 2004-05 and the CDE's list of critically overcrowded schools and schools that operate on a multi-track year-round calendar.

of White students attend such schools while 22% of African American and 23% of Hispanic students attend these schools. Furthermore, as the last two columns of Table 16 reveal, in Los Angeles Unified nearly 80% of all students attend a critically overcrowded or multi-track school. However, unlike other school districts, critically overcrowded schools in Los Angeles Unified do not appear to enroll a disproportionate number of African American students. Specifically, while overall 78% of students in Los Angeles Unified are enrollment in a critically overcrowded school, only 70% of African American students attend such a school.

Table 17 provides the same information as Table 16 in a slightly different manner. It shows how the characteristics of critically overcrowded and multi-track schools differ from other schools. For example, in the average critically overcrowded or multi-track school, approximately 73.2% of students are eligible for free or reduced price lunch. In all other schools, that percentage is only 45.2. Overall, Table 17 reveals that critically overcrowded and multi-track schools contain much higher percentages of poor and minority students and much lower percentages of white students.

Table 18 compares the level of school facility funding among districts that contain critically overcrowded or multi-track schools to the level of funding in other districts. Facility funding is expressed in per-pupil terms and is measured as the sum of all revenue raised between 1998 and the present divided by average enrollment over the time period. Compared to districts that contain no critically overcrowded or multi-track schools, those that do, tend to have higher revenue per pupil. For example, total revenue per pupil averaged $11,323 among the 46 districts that contained critically overcrowded schools and $10,459 among the 107 districts that contained either critically overcrowded or multi-track schools. In comparison, total revenue per pupil averaged $9,061 among the remaining 855 districts. Table 18 also illustrates that districts with critically overcrowded and multi-track schools tend to have higher local bond revenue per pupil and higher state aid per pupil.

While total revenue per pupil tends to be higher in districts with critically overcrowded schools, it is much higher in Los Angeles Unified, which contains nearly 50% of all schools on the CDE's critically overcrowded school list. For example, total revenue per pupil in Los Angeles Unified is nearly twice the level of other districts with critically overcrowded schools and more than twice the level of districts with no critically overcrowded or multi-track schools. Similarly, local bond revenue in Los Angeles Unified is nearly three times that of other districts with critically overcrowded or multi-track schools and more than four times that of all other districts.

While local bond revenue and total revenue tend to be higher in Los Angeles Unified, state aid tends to be lower. Between 1998 and June of 2006, Los Angeles Unified received $2,860 per-pupil in state aid. In contrast, state aid averaged $4,133 among all districts with critically overcrowded or multi-track schools and $3,495 among all other districts. Recall, however, that state aid represents state funding

that has been *apportioned* to school districts for new school construction and modernization projects. When the state implemented the COS program in 2002, it allowed districts with critically overcrowded schools to reserve funding for up to five years (four years plus a possible one-year extension). As a result, a substantial proportion of the funding allocated to the COS program may not have been apportioned to school districts as of June of 2006.

The fourth row of Table 18 attempts to quantify how much additional state aid districts with critically overcrowded schools are likely to receive once they turn their preliminary (reserved) COS apportionments into actual apportionments. Specifically, the fourth row shows the per-pupil *preliminary* COS apportionments from Proposition 47 and 55. On average, districts with critically overcrowded schools stand to receive an additional $531 per pupil in state aid once they convert their preliminary apportionments. Furthermore, funding for the COS program is not equally distributed across all districts: while Los Angeles Unified contains approximately 50% of all critically overcrowded schools, approximately 75% of all COS program funding has been reserved for Los Angeles Unified.[75] That amounts to approximately $3,761 per pupil in additional state aid for Los Angeles Unified alone. Thus, once one considers both actual state apportionments and preliminary state apportionments for the COS program, state aid in Los Angeles Unified is substantially higher than in other districts.

8. Charter School Facility Funding

Sections 2 through 7 documented facility funding for traditional K-12 public schools in California. This section provides an overview of charter school facility funding. Charter schools face unique facility challenges for several reasons. First, unlike public school districts, charter schools can not, by themselves, issue local general obligation bonds to finance their school facility needs. Second, a majority of charter schools in California are start-ups that do not have direct access to public school facilities. Many of these start-up schools obtain facilities by leasing or renting space in office buildings and other commercial sites. For example, a survey conducted by the Rand Corporation in 2002 found that approximately 40% of start-up charter schools leased space from commercial sites, while 24% obtained facilities by either purchasing or renting a privately owned facility.[76] These schools incur leasing and rental expenses that traditional K-12 public schools do not. Third, because lending institutions view charter schools as high-risk investments, many charter schools have found it difficult to obtain the loans necessary to finance school facilities.[77] These unique facility issues have led some researchers to conclude that, "an inadequate supply of school facilities may be the single largest stumbling block to the

[75] District-level data on preliminary apportionments for the Critically Overcrowded School Program was obtained from the Office of Public School Construction.
[76] Krop and Zimmer (2005), p. 19.
[77] EdSource (2004), p. 23.

growth of charter schools."[78] This section begins by providing an overview of the challenges faced by charter schools in obtaining school facilities. It then goes on to discuss how recent legislation and several court cases have affected the ability of charter schools to obtain adequate facilities. It ends by discussing charter school facility funding options that have recently become available.

The first charter schools were established in California in 1993 after the state legislature enacted SB 1448, the Charter Schools Act of 1992. Among other things, the Act capped the number of charter schools in the state at 100 (with no more than 10 charter schools in any single district) and prohibited private schools from being converted into charter schools. While the Act provided significant detail on the financing of current operating expenditures for charter schools it made no mention of charter school facility issues. The failure of the original legislation to address charter school facility needs stems partly from an underlying belief among its framers that charter schools would be "conversions" and utilize district facilities.[79] However, as early as 1995, nearly 50% of charter schools were start-ups with no access to existing school facilities.[80] As mentioned previously, these start-ups typically faced significant facility challenges due to rental and leasing costs and difficulties in obtaining loans to secure facilities. Furthermore, many school districts were experiencing facility shortages in the 1990's making it difficult for them to find adequate housing for conversion charter schools. The facility problem facing charter schools became more severe when the state legislature expanded the cap on charter schools in 1998. Specifically, AB 544 increased the statewide cap on charter schools to 250 for the 1998-99 school year, and allowed the state to approve an additional 100 schools every year thereafter. Between 1993 and 2000, the number of charter schools expanded from 15 to 165 and by 2005 there were 502 charter schools operating in California. These 502 charter schools enrolled approximately 180,000 students or 3% of California's total K-12 public school student population. As the number of charter schools increased, so did the facility problems facing those schools. According to the 2002 survey of charter schools conducted by the Rand Corporation, 62% of all charter schools surveyed stated they were struggling to finance their school facility needs.

The Ramifications of Proposition 39 for Charter Schools

The facility picture for charter schools changed considerably following the passage of Proposition 39 in November of 2000. In addition to reducing the vote requirement on local G.O. bonds from two-thirds to 55%, the proposition also required that, "each school district make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the

[78] Sugarman (2002), p. 6.
[79] EdSource (2004), p. 20.
[80] See Krop and Zimmer (2005) for a historical account of the number of start-up and conversion charter schools in California.

charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district."[81] Prior to the passage of Proposition 39, school districts were only required to allow charter schools to use a district facility if that facility was not currently being used by the district for instructional or administration purposes or if the facility had not been historically used for rental purposes. With the passage of Proposition 39, it became the legal responsibility of school districts to make all reasonable efforts to house charter school students in facilities that were essentially equivalent to those used to house in-district students. Thus, Proposition 39 substantially increased the responsibility of school districts to provide adequate facilities for charter schools.

The charter school provisions of Proposition 39 were phased in over a three-year period. For school districts that passed a bond measure before November 8, 2003, the provisions took effect in July of the year following the passage of a bond measure. For those school districts that did not pass a bond prior to November 8, 2003, the provisions took effect on that date. Furthermore, the charter school provisions of Proposition 39 only apply to charter schools with an enrollment or projected enrollment of 80 students or more. If the actual or projected enrollment of a charter school is less than 80 students, a district can deny the facility requests of the charter school. While the provisions of Proposition 39 require school districts to provide facilities for charter schools, districts are not required to use unrestricted general fund revenues to make those facilities available. In particular, section 47614 of the California Education Codes states that, "no school district shall be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students." However, if a district does choose to use unrestricted general fund revenue, the district may charge the charter school a "pro rata share" of the facility costs. The pro rata share is based on the ratio of space allocated by the school district to the charter school divided by the total space of the district. If the district uses any other source of revenue (e.g. local bonds or state aid) to finance the cost of charter school facilities, the charter school could not be charged for those costs.

While the intent of Proposition 39 was to ensure that public school facilities were shared fairly among all students, including those enrolled in charter schools, the meaning of "fair" quickly became a matter of contentious debate. The debate may have culminated when the Fifth District Court of Appeals in California ruled that, "charter school students are district students and that school district may not discriminate against charter school students when it comes to providing facilities."[82] The court's ruling stems from the case of *Ridgecrest Charter School v. Sierra Sands Unified District*. In September of 2002

[81] California Education Code, Section 47614.
[82] California Charter School Association, July 1, 2005.

Ridgecrest Charter School filed a Proposition 39 request for district facilities within Sierra Sands Unified District. The district responded by approving a total of nine and a half class rooms located at five different schools.[83] The charter school rejected the district's offer, arguing that that the offer violated the provisions of Proposition 39 because it did not provide facilities that were contiguous. Ridgecrest Charter then made a counter proposal, asking the district to make available one particular site that was currently being used primarily for nonacademic purposes. The district rejected the charter schools' proposal arguing it had made every reasonable attempt to locate and make available space at the fewest number of sites.

On July 29, 2003, Ridgecrest Charter took its case to the court and filed a complaint with the Kern County Superior Court. In its complaint Ridgecrest asked the court to uphold its right under the provisions of Proposition 39 to receive facilities that were contiguous and mandate Sierra Sands Unified to provide facilities at a single site. The presiding judge in the case ruled that Sierra Sands had not abused its discretion in allocating facilities and therefore Ridgecrest Charter was not entitled to a single site to house its students. Ridgecrest appealed and the case was remanded to the Court of Appeal, Fifth District. On June 29, 2005, the Court of Appeal overturned the lower court's ruling. In its decision, the court stated that, "a school district's exercise of its discretion in responding to a Proposition 39 facilities request must comport with the evident purpose of the Act to equalize the treatment of charter and district-run schools with respect to the allocation of space between them."[84] The decision goes on to say that the court interprets the meaning of "reasonably equivalent" and "fairly shared" to mean that, "to the maximum extent practicable, the needs of the charter school must be given the same consideration as those of the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous."[85] While the court realized that Ridgecrest's facility requests would most likely cause "considerable disruption and dislocation among the District's students, staff, and programs," it nevertheless ruled that the provisions of Proposition 39 required that districts share their facilities fairly with charter school students.

Technically, the court's decision in *Ridgecrest Charter School v. Sierra Sands Unified District* applies only to those school districts located in the Fifth Appellate district of California. However, the decision is likely to affect school districts throughout the state as charter schools become more aggressive in pursuing their Proposition 39 facility requests. For example, a survey of charter schools conducted by EdSource in early 2005 revealed that among the 135 charter schools that submitted Proposition 39 requests for facilities to their districts, 53 (or 39%) of those schools reported that they did not receive

[83] *Ridgecrest Charter School v. Sierra Sands Unified School District*, 130 Cal.App.4th 986, 30 Cal.Rptr.3d 648; hereafter *RCS v. Sierra Sands Unified.*
[84] *RCS v. Sierra Sands Unified*, pp. 15.
[85] *RCS v. Sierra Sands Unified*, pp. 15.

satisfactory facilities in response to their request or through continued negotiations.[86] Some of those charter schools have now filed lawsuits to address their facility needs. For example, in December of 2005, two charter schools located in San Diego Unified filed a complaint with the San Diego Superior Court arguing that the district had failed to uphold the provisions of Proposition 39 to provide their students with adequate facilities. While it is still too early to fully evaluate the impact of Proposition 39 on the facility needs of charter schools, there is little question that the proposition has fundamentally altered the facility predicament faced by these schools.

Facility Funding for Charter Schools

In addition to passing Proposition 39, California has also implemented several programs designed to increase funding for charter school facilities. These include the Charter School Facilities Program (CSFP), which is financed with bond revenue from Propositions 47 and 55, the Charter School Revolving Loan Fund (CSRLF), the Charter School Facility Grant Program (CSFGP), and the Charter School Facilities Incentive Grants Program (CSFIGP) which is funded primarily by the federal government. This section concludes by discussing each of these programs in turn.

Assembly Bill 14 enacted in 2002 established the Charter School Facilities Program (CSFP) as a pilot program to assist charter schools in obtaining adequate school facilities. The program allows charter schools or charter school granting authorities to apply for preliminary apportionments (reserve funds) for new school construction projects. Prior to the establishment of the CSFP, charter schools wishing to access state bond revenue for facilities projects had to petition their school districts to include them on applications for state funding. According to EdSource and the Office of Public School Construction, only five new construction projects and four modernization projects received funding prior to the establishment of the CSFP. The CSFP was originally funded with $100 million of Proposition 47 bond revenue. With the passage of Proposition 55 in 2004, the program received an additional $300 million in funding.

The CSFP allows districts to obtain funding for new school construction projects directly or through the school district where the charter school is located.[87] The program currently does not provide funding to charter schools for modernization projects nor does it provide funding to schools offering non-classroom based instruction.[88] To be eligible for funding, a charter school must demonstrate that the district in which it is physically located is eligible for new school construction. Recall that under the

[86] EdSource surveyed the universe of charter schools operating in California as of the 2004-05 year. 92% of all charter schools responded to the survey.
[87] State Allocation Board and the California School Finance Authority, "Charter School Facility Funding: Joint Report to the Legislature," July 2005.
[88] If approved by voters this November, Proposition 1D would expand Charter School Facilities Program to include modernization funding.

School Facility Program this amounts to providing evidence that existing seating capacity is insufficient to house existing students or anticipated students using a five-year projection of enrollment.[89] Similar to other programs funded through the School Facility Program, state aid is provided on a 50/50 state and local matching basis. Thus, charter schools wishing to access funds in the CSFP must provide 50% of a project's cost. Charter schools have the option of meeting the 50% match either as a lump sum or by entering into lease agreement with the state for a period of up to 30 years. To qualify for funding, a charter school must demonstrate to the California School Finance Authority that it is financially sound and is capable of meeting the required 50% local matching contribution.

Similar to the Critically Overcrowded School Program, the CSFP allows charter schools to receive preliminary apportionments for new school construction projects. A preliminary apportionment is essentially a reservation of funds which provides a charter school with more time to find an appropriate location for a new school construction project and to obtain the necessary approvals from the California Department of Education and the Division of the State Architecture. Charter schools have up to four years to convert their preliminary apportionments into a final apportionment.

In the original round of funding, which consisted of $100 million in Proposition 47 bond revenue, the Office of Public School Construction received 17 applications that were eligible for funding. Given the limited funding available, only six of those projects were able to be funded. As a result of this shortfall in funding, the state legislature enacted SB 15 in 2003. The new legislation revised the CSFP regulations to include caps on charter school project funding. Specifically, the new legislation limited the number of per pupil grants that could be requested, the maximum acreage allowed for site acquisition, and total project costs. Because of these caps, in the second round of funding the State Allocation Board was able to fund 28 out of 34 eligible projects.[90] Table 19 lists the CSFP per-pupil grant amounts and the caps on funding. When the number of eligible project applications exceeds the total amount of funding available in the CSFP, preliminary apportionments are rationed so that they are representative of: (1) various geographical areas in the state, (2) various grade levels served by charter schools, (3) urban, rural and suburban areas of the state, and (4) large, medium and small charter schools. Within each of those areas, preference is given to charter schools located in districts with large percentages of students eligible for free or reduced price lunch, those located in districts with overcrowded schools, and nonprofit charters.

[89] If the district where the charter school is, or will be, located has not established new construction eligibility, the charter school must submit the appropriate documentation establishing eligibility at the time it submits its application for a principle apportionment to the OPSC.

[90] State Allocation Board and the California School Finance Authority, "Charter School Facility Funding: Joint Report to the Legislature," July 2005.

In addition to the CSFP, the State also administers a number of loan and grant programs designed to assist charter schools in obtaining adequate facilities. The first such program was established in 1996 when the state legislature created the Charter School Revolving Loan Fund (CSRLF). The program provides low-interest loans of up to $250,000 for non-conversion charter schools.[91] Schools can receive more than one loan as long as the total amount received does not exceed $250,000 over the lifetime of the charter school but any given loan must be repaid within five years. Charter schools that are incorporated may borrow directly from the CSRLF, all other charter schools must request a loan through their charter-granting authority. Charter schools can use the proceeds of a loan to help meet any of the objectives outlined in their charter, including the leasing of facilities and the costs of facility improvements.

In 2001, the state legislature created the Charter School Facility Grant Program (CSFGP) to provide charter schools with assistance for facilities rent and leasing costs. To be eligible for a grant, 70% of the students enrolled in a charter must be eligible for free or reduced price meals or the charter school must be located in district where at least 70% of all students are eligible for free or reduced price meals. In addition, conversion charter schools and those that have received reasonably equivalent facilities through a Proposition 39 request are not eligible for a grant. The program allows districts to receive a reimbursement of up to $750 per pupil for rental and leasing expenditures but no more than 75% of the charter school's total annual rental and leasing cost. Since the program's inception in 2001, the state legislature has appropriated $22.2 million for the program.

Finally, the Charter School Facilities Incentive Grants Program (CSFIGP) is also designed to provide charter schools with assistance for facility costs. The CSFIGP was implemented in 2005 shortly after the California School Finance Authority (CSFA) was awarded a grant of $49.25 million from the U.S. Department of Education to assist charter schools in obtaining the adequate school facilities. The proceeds of the grant are to be allocated over a five year period. Grant awards can be used to cover a charter school's rent, lease, mortgage or debt service costs, or for the costs associated with the purchase, design and construction of facilities.[92] Similar to the Charter School Facility Grant Program, the CSFIGP allows districts to receive a reimbursement of up to $750 per pupil for rental and leasing expenditures but no more than 75% of the charter school's total annual rental and leasing cost. Furthermore, no grant may exceed $250,000 per year, with a maximum grant period of three years. The CSFIGP also provides per-pupil grants for the construction and renovation of school facilities. Charter schools are awarded $1,000 per pupil to cover up to 75% of the annual costs of eligible construction projects. Individual project

[91] The discussion in the text describes the CSRLF program as amended in 2000. Under the original legislation the maximum grant available was $50,000. Furthermore the proceeds of the loan had to be used within the first year of operation and repaid within two years.

[92] California School Finance Authority, Text of Regulations, Charter School Facilities Program – Implementation of State Charter School Facilities Incentive Grant Program. Full text is available at: http://www.treasurer.ca.gov/csfa/charter/2005/pgm_regulations.pdf.

grants are limited to a maximum of $500,000 per year, with a maximum grant period of three years. To qualify for a grant, a charter school must be in good standing with its chartering authority and have completed at least one year of instructional activity.[93] Funding priority for CSFIGP grants is based on a preference point system. Specifically, charter schools receive preference points based on: (1) the percentage of free or reduced price students attending a school (maximum of 40 points), (2) location in an overcrowded school district (maximum 40 points),[94] and (3) whether the school is a nonprofit entity (20 points).

9. Discussion

Sections 2 through 8 of this report documented various aspects of school facility funding in California and examined how revenue for new school construction and modernization projects is distributed across school districts. This final section provides a review of some of the major findings in each section and links those findings to research reports that have recommended various changes to the current system of school facility finance in California.

A Predictable and Consistent Method of Financing School Facilities

Sections 2 and 3 documented the history of school facility finance in California and examined how the level of school facility funding has changed over time. Those sections revealed that California's system of school facility finance has changed frequently and that facility spending has fluctuated quite dramatically over time. While several factors are responsible for the dramatic fluctuations in facility spending, one factor stands out; namely, the irregular nature of statewide school facility bond issues. Several recent reports have suggested the state develop a more consistent and predictable method of financing school facilities. For example, in her 2001 report entitled, "A New Blueprint for California School Facility Finance," Legislative Analyst, Elizabeth Hill, notes:

> State bonds are usually fully depleted before additional funds are authorized by voters, leaving "hills and valleys" of revenue availability. This unpredictability in state funding impairs district capacity to plan, build schools, and raise supplementary local funds.[95]

Similarly, in its 2002 report, the Joint Legislative Committee to Develop a Master Plan for Education notes:

> … there is no doubt that the current model of funding for public school facilities in California is unresponsive to the planning and funding needs of school districts, and, therefore, results in the

[93] In addition, charter schools receiving funding through the Charter School Facility Program are ineligible for grants.
[94] The preference points are based on the percentage overcrowded, which is calculated by dividing the number of unhoused students in a district by the district's current enrollment.
[95] Legislative Analyst's Office (2001), p. 4.

> inefficient use of resources for facilities. In particular, reliance on state General Obligation bonds and the current method of allocating bond proceeds has created a system that has not been conducive to long-term planning for school facility needs at the local level, and that fails to 'leverage' or encourage the development of local sources of funding for school capital outlay needs.[96]

Reports issued by Cohen (1999), PolciyLink and MALDEF (2005), the Little Hoover Commission (2000), and the California Performance Review Commission (2004) all reach a similar conclusion.

Each of the reports mentioned above provides a slightly different recommendation on how to address the issue but all suggest that the state develop a more predictable and consistent method of financing school facilities. For example, both the LAO report and the Master Plan for Education report call for replacing the current system with a new system that would provide school districts with annual per-pupil allocations from the state General Fund to finance school facility needs.

The irregular nature of statewide school facility bond issues and the "hills and valleys" of revenue availability may also be partly responsible for some of the recent increases in school construction costs. In particular, because statewide bond issues occur infrequently and tend to be quite large when they do occur, school construction costs may rise following a bond issue. In essence, funding school construction with infrequent and large G.O. bond issues causes the demand curve for school construction to shift right following a statewide bond issue. If the supply of school construction is fixed or relatively inelastic, this would lead to a relatively large increase in construction costs due to increased demand. While there are no research reports that document a significant link between construction costs and the passage of statewide bond issues, there is plenty of anecdotal evidence that suggests construction costs have risen significantly since the passage of Proposition 1A and Propositions 47 and 55. Thus, moving towards a more predictable and consistent method of funding school facilities may also have the (positive) unintended consequence of reducing construction costs.

Unifying State Oversight of School Facility Projects

Section 4 of this report provided an overview of the School Facility Program which was established in 1998 following the passage of AB 50. As noted in that section, the SFP was designed to stream-line the application process and simplify the overall structure of the state's school facilities program. Several reports, including Cohen (1999) and the Little Hoover Commission (2000), suggest that the state has made significant progress in streamlining the regulatory process and improving the transparency and efficiency of the state's school facility program. Nevertheless, these reports have called for streamlining the state's school facility approval process even further. For example, in its 2004 report, the California Performance Commission notes:

[96]Joint Legislative Committee to Develop a Master Plan for Education (2002), p. 172.

> The state's multi-billion dollar investment in local school buildings involves a cumbersome, duplicative and time-consuming multi-agency approval process that fails to review important elements of the projects. The state needs a facility approval process that ensures the safety and financial security of school sites and construction, without delaying or adding cost to a project.[97]

Reports issued by the Little Hoover Commission (2000) and the Pacific Research Institute (2004) come to similar conclusions.

The concerns raised in these reports revolve around the fact that school districts must interact with multiple state agencies when seeking approval for new school construction and modernization projects. For example, as noted in section 4, in order to obtain funding for facilities projects, school districts must obtain approval from a minimum of six state agencies. In addition, the Department of General Services' website notes that, "seven other State agencies operate approximately 40 programs that also may become involved under certain conditions. The number of entities involved can make the process of building or remodeling a school extremely complex and time-consuming." Based on these facts, the Little Hoover Commission (2000) and the California Performance Committee (2004) have called for unifying state oversight of school facility projects. Both reports call for creating a single state agency (or the functional equivalent thereof) that would serve as the point of contact for school districts.

Equalizing the Ability of School Districts to Raise General Obligation Bond Revenue

Sections 5 and 6 documented the size and distribution of school facility revenue between 1998 and the present. Those sections revealed that funding for school facility projects varies widely across districts. Some of the variation can be explained by differences across districts in need. For example, districts with higher enrollment growth and those that have not invested heavily in school infrastructure in the recent past, tend to have significantly higher levels of facility funding. However, section 6 also highlighted the fact that facility funding tends to vary systematically with district property wealth. In particular, districts with higher assessed value per pupil tend to have significantly higher local bond revenue per pupil and consequently higher total revenue per pupil.

The relationship between assessed value and the ability of school districts to raise general obligation bond revenue was the primary focus of a 1986 report on school facilities prepared by the Legislative Analyst's Office. The report, which was written just prior to the passage of Proposition 46, highlighted a potential problem with the state legislature's 1986 proposal to reinstate the authority of local school district to raise local bond revenue. Specifically, the report notes:

> One potential drawback of this proposal, however, is that it could violate the principles on which the Supreme Court's decision in the *Serrano v. Priest* case was based. This is a legitimate

[97] California Performance Review (2004), Vol. 4, p. 899.

> concern. School districts with considerable property tax wealth could raise large amounts for school facilities by imposing a very low tax rate, while school districts with less property tax wealth would not be able to raise sufficient funds even with a very high tax rate.

In *Serrano v. Priest*, the California Supreme Court ruled that differences across district in spending per pupil could not be significantly related to differences in property wealth. Although, the issue at hand in that case was the relationship between *current* spending and property wealth, it seems apparent that the LAO was concerned that a similar argument could be made for the relationship between *capital* (infrastructure) spending and property wealth. To illustrate the LAO's point, consider two unified districts, one with an assessed value per pupil of $191,000 (approximately the 10th percentile of assessed value per pupil among unified districts in 2005), and the other with an assessed value per pupil of $1,204,000 (approximately the 90th percentile of assessed value). If both districts impose a tax rate of 0.06% (the maximum allowed), the first district would raise $115 per pupil in local bond revenue while the second district would raise $722.[98] Thus, even though the two districts impose the same tax rates, the second district can raise nearly seven times more revenue.

In its 1986 report, the LAO suggested the state implement a guaranteed tax yield system to address such differences in the ability of local districts to raise revenue through local general obligation bond issues. As noted by de Alth and Rueben (2005), under such a system, the state would guarantee that any given tax rate provided all districts with the same amount of revenue. Specifically, the state would provide a schedule listing a guaranteed yield per pupil from any given tax rate. State aid would then be used to "top off" the revenue raised by low-wealth districts from a given tax rate. Thus, the system would be based on variable state matching rates with low-wealth districts receiving higher levels of state aid than high-wealth districts. A similar type of program was suggested by the LAO in its 2001 report on school facility finance.[99]

Expanding the Definition of Critically Overcrowded Schools

Section 7 examined how the characteristics of critically overcrowded and multi-track schools differed from other schools. It also examined how school facility funding in districts that contain critically overcrowded and multi-track schools compares to other districts. The section illustrated that critically overcrowded and multi-track schools tend to enroll significantly higher proportions of

[98] Under the guidelines set forth by Proposition 39, unified districts are prohibited from proposing, on any single ballot, a tax increase of more than $60 per $100,000 of assessed valuation, implying a tax rate of 0.06%.

[99] In its 2001 report, the LAO suggested an "ability-to-pay" adjustment program. Under such a system, the state would target revenue to districts with the least ability to raise revenue through local general obligation bonds and developer fees. Specifically, the state would fund the difference between some set standard of revenue per pupil and the amount of revenue a district could raise by imposing the maximum allowable tax rate and collecting developer fees at the maximum rate allowed by law.

disadvantaged and minority students. It also showed that districts that contain critically overcrowded schools tend to receive substantially higher facility funding, particularly Los Angeles Unified. In its 2005 report on ending overcrowding in California's public schools, PolicyLink and MALDEF note that the Critically Overcrowded Schools (COS) Program, which was implemented in 2002, has made progress in addressing the problem of overcrowding. Nevertheless, the report also outlines some potential concerns with the COS program. Specifically, the report notes that the standard used by the CDE to define critically overcrowded schools is quite high: a school must have a student density that is at least 200% of the CDE's recommended density. Furthermore, the report goes on to note:

> … while density is considered a good measure of overcrowding, using density alone is inadequate in describing the full extent of the problem. California schools that use temporary approaches to increase school capacity, such as multi-track year-round education calendars, busing, and portable classrooms—practices that are strong indicators of school overcrowding—are not fully captured under the state definition. Portable classrooms are usually counted as permanent classroom space, bused students are not counted in the schools they should attend but are unable to because there is no room for them, and the presence of multitrack year-round calendars is not seen as an indication of overcrowding. The COS program should strive to broaden its definition and capture the schools that use such strategies.[100]

Recently, the state legislature has taken action to address some of the concerns raised by PolicyLink and MALDEF. In particular, AB 127, the Kindergarten-University Public Education Facilities Bond Act of 2006, contains $1 billion in funding for Overcrowding Relief Grants. The grants would enable districts to reduce the number of portable classrooms on overcrowded school sites and replace them with permanent classrooms.[101] To be eligible for a grant, a school district must contain schools with a student density that is 175% or more of the CDE's recommended density. The Act allows districts to exclude portable classrooms from the count of existing capacity for the purpose of establishing eligibility for new school construction.[102] Thus, the Act addresses (at least to some degree) two of the concerns raised by PolicyLink and MALDEF: it reduces the density threshold for participating in the program from 200% of the CDE standard to 175% of that standard and it excludes portable classrooms from a district's calculation of existing capacity. According to the Legislative Analyst's Office, under the definition of overcrowding used by the Overcrowding Relief Grants program, approximately 1,800 schools (20 percent of all schools) would be eligible for funding.[103]

While AB 127 addresses some of the concerns raised by PolciyLink and MALDEF, it does not address their concerns regarding schools that utilize multi-track year-round schooling or busing to relieve

[100] PolicyLink and MALDEF (2005), p. 6.
[101] State Allocation Board, Implementation Committee Meeting, July 21, 2006.
[102] Portable class rooms used for the Class Size Reduction Program may not be excluded from the calculation of existing capacity.
[103] Legislative Analyst's Office (July 2006), p. 3.

severe overcrowding. An older version of AB 127, namely AB 58, did contain language that would have allowed school districts access to state funds to "provide permanent school facilities for pupils in multi-track year round programs or pupils on double-session."[104] However, the provision was eliminated from the final version of AB 127.[105] Other recent legislation has taken action to eliminate the most extreme form of multi-track year-round schooling, commonly known as Concept 6. Relative to other multi-track year round programs, the Concept 6 program provides the maximum enrollment given a school's capacity and has the potential to increase the seating capacity of a school by 50%.[106] However, this increased capacity comes at a cost. Students that attend schools operating on a Concept 6 calendar receive only 163 days of instruction. Students attending schools that operate on a traditional calendar or any other multi-track year round calendar receive 180 days of instruction. As of 2004-05, 152 schools were operating on a Concept 6 year-round calendar and of those 128, or 84%, were located in Los Angeles Unified.[107] AB 1550, enacted in 2004 prohibits a school district from operating a Concept 6 program unless the district operated such a program continuously since the 2003-04. The bill also prohibits the operation of a Concept 6 program after July 1, 2012.

Adapting to Changing Enrollment Trends

The annual growth rate of student enrollment in California has been steadily declining since the mid-1990's and is projected to continue declining until about 2009 or 2010. Furthermore, according to projections made by the California Department of Finance, between 2005-06 and 2014-15 total student enrollment in California is predicted to increase by only 191,042 students or approximately 3%. In light of this trend of slowing enrollment growth, the Legislative Analyst's Office has suggested the state allocate a larger fraction of any future statewide bond issues towards modernization of existing school facilities and a smaller fraction towards new school construction.[108] Proposed funding for the Kindergarten-University Public Education Facilities Bond Act of 2006 is consistent with the LAO's recommendation. In particular, if approved by voters this November, the Act would provide $3.3 billion for modernization projects versus $1.9 billion for new school construction projects. In contrast, bond revenue from Propositions 47 and 55 provided 3.7 billion for modernization projects and $8.8 billion for new school construction.

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[104] Assembly Bill 58, Amended in Assembly January 4, 2006. Full text available at: http://info.sen.ca.gov/pub/bill/asm/ab_0051-0100/ab_58_bill_20060104_amended_asm.pdf

[105] In 2002, the state legislature also considered making funding for districts that utilized multi-tract year-round schooling programs a priority for the Critically Overcrowded Schools program. See Coalition for Adequate School Housing New Archives, February 15, 2002.

[106] Oakes (2002), p. 6.

[107] In 2004-05, approximately 4% of all students were enrolled in a school operating on a Concept 6 year-round calendar. Source: California Department of Education list of schools operating on a multi-track year-round calendar.

[108] Legislative Analyst's Office (February 2006).

Creation of a Statewide School Facility Inventory System

Finally, sections 5, 6, and 7 of this report alluded to an important problem facing California's system of school facility finance: the state lacks a coherent definition of what it means for a school to have adequate facilities and it lacks a statewide school facility inventory system. As Pastor and Reed (2005) note:

> Perhaps the most fundamental barrier to an equitable distribution of school bond funds is the lack of a comprehensive school facilities assessment. The state simply does not have the information to compare schools and identify the greatest facility needs.

Reports issued by the Little Hoover Commission (2000), the Joint Legislative Committee to Develop a Master Plan for Education (2002), the Legislative Analyst's Office (2001), and PolicyLink and MALDEF (2005) echo a similar concern.

Although the state currently lacks a comprehensive school facilities assessment, it is making progress towards resolving this issue. As part of the Williams settlement, the state has begun work on implementing a school facilities needs assessment program. Specifically, beginning in 2005-06, SB 550 requires school districts that participate in the SFP and the Deferred Maintenance Program to establish a Facilities Inspection System (FIS) and to ensure that all schools within the district are in "good repair" (i.e. clean, safe and functional).[109] SB 550 also charged the Office of Public School Construction with developing an evaluation instrument that could be used by school districts to identify if a school facility is in good repair. This instrument is to be used by school districts on an interim basis until the state legislature adopts a permanent standard for good repair. Those statewide standards must be adopted by the legislature and governor no later than September 1, 2006. Although, the final form of these statewide standards has not been fully established, the Office of Public School Construction made the following suggestion in March of 2006:

> … the State standard for good repair should be described in statute in narrative form, of moderate detail, and be composed of the assessment of more than a dozen school components. Statute should also require that an evaluation tool be developed and maintained by the OPSC or another State agency and it should be designed to accommodate a rating and scoring system.[110]

While it is too early to tell how the implementation of a state standard for good repair will affect school facility finance in California, it nevertheless represents a significant step forward.

[109] According to the Office of Public School Construction, nearly 89% of school districts participate in the SFP or Deferred Maintenance Program. Thus, the vast majority of California's school districts will be required to implement a Facilities Inspection System.

[110] Office of Public School Construction (2006), p. 1.

Tables and Figures

Figure 1
California per Pupil School Infrastructure Spending, 1960-2005

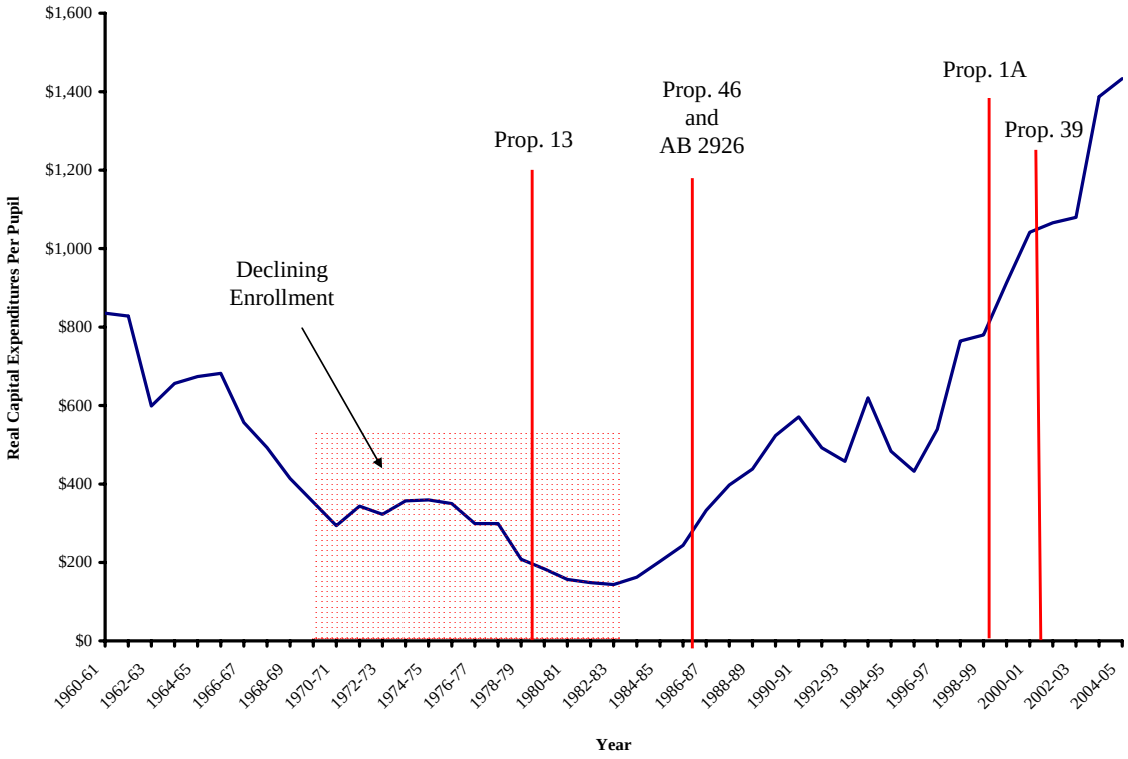

Table 1
State K-12 Education General Obligation Bonds, 1949-2005
($ millions)

Years	No. proposed	No. passed	Amount proposed	Amount passed	Real amount passed (2005 $)
1949-60	5	5	1,055	1,055	5,977
1961-70	3	3	735	735	3,772
1971-80	4	2	1,050	500	1,829
1981-85	2	2	950	950	1,571
1986-90	5	5	4,000	4,000	5,885
1991-95	3	2	3,800	2,800	3,662
1996-00	2	2	8,725	8,725	10,204
2001-05	2	2	21,400	21,400	23,316
Total	26	23	$41,715	$40,165	$56,215

Table 2
Local K-12 Education General Obligation Bonds, 1986-2005
($ millions)

Years	No. proposed	No. passed	Amount proposed	Amount passed	Real amount passed (2005 $)
1986-90	124	65	2,730	1,334	1,944
1991-95	292	128	8,499	3,603	4,613
1996-00	444	282	23,039	14,127	16,441
2001-05	355	285	28,621	26,091	28,058
Total	1,215	760	$62,889	$45,155	$51,056

Figure 2
Facility Spending per Pupil: CA versus the U.S, 1988-2004

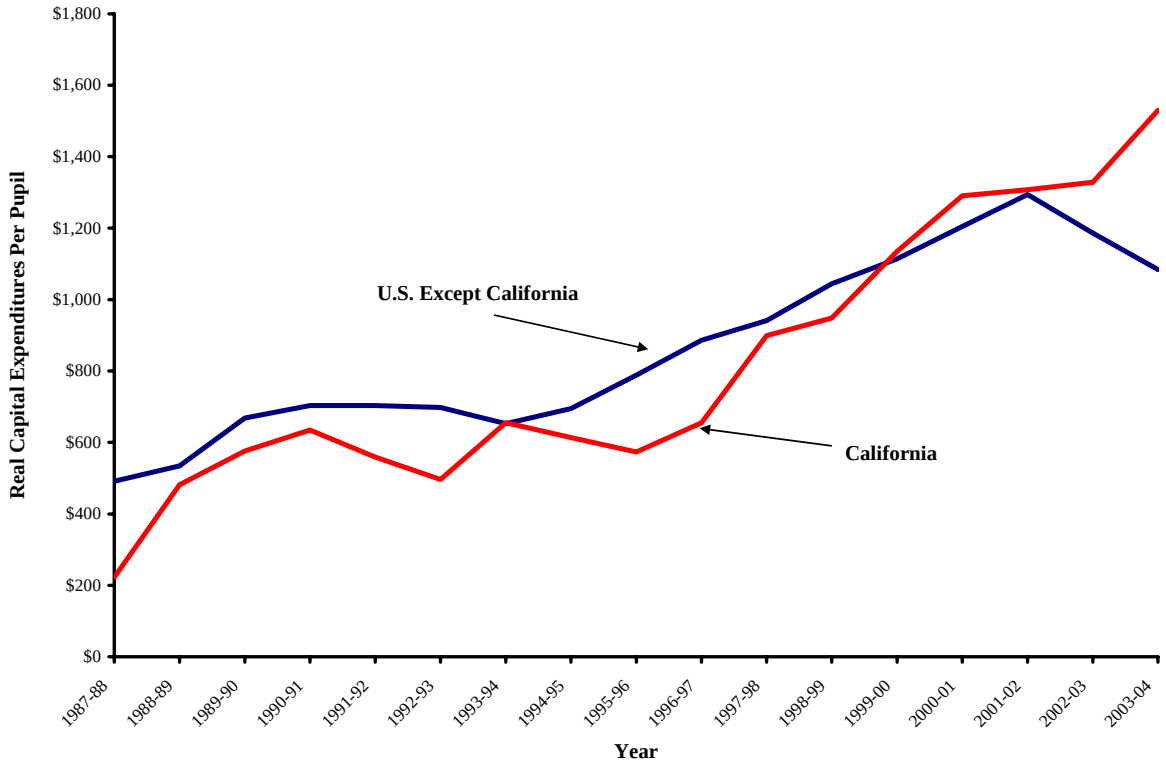

Table 3
State Comparisons of Facility Spending per Pupil, 1988-2004

Period	U.S. Except CA	CA	CO	FL	NJ	TX	WA
1988-92	$620	$495	$698	$1,076	$520	$596	$1,267
1993-96	$708	$585	$886	$1,114	$744	$833	$1,196
1997-00	$996	$909	$1,166	$1,148	$1,058	$1,168	$1,199
2001-04	$1,192	$1,364	$1,193	$1,371	$1,354	$1,348	$1,253
1988-04	$864	$818	$969	$1,172	$895	$963	$1,231
Enrollment Growth 1988-04	18.6%	42.9%	35.2%	55.4%	26.3%	33.8%	31.7%

Figure 3
New School Construction and Modernization Funding Process

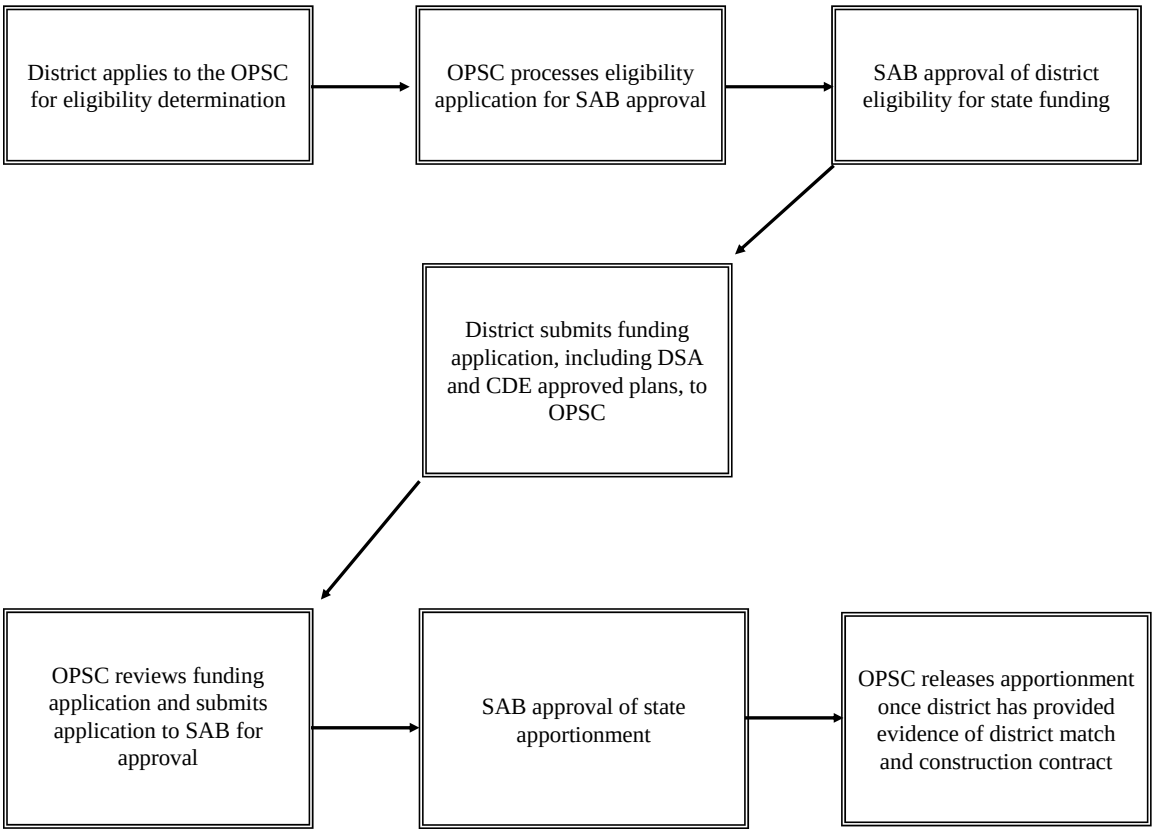

Table 4
New School Construction Grant Amounts

Type of Student	Per-Pupil Grant Amount
Elementary	$7,082
Middle School	$7,490
High School	$9,805
Special Day Class – Non-Severe	$15,096
Special Day Class – Severe	$22,572

Table 5
Modernization Grant Amounts

Type of Student	Buildings 25 years old or older but less than 50 years old.	Buildings 50 years old or older.
Elementary	$3,059	$4,249
Middle School	$3,236	$4,494
High School	$4,236	$5,884
Special Day Class – Non-Severe	$6,521	$9,056
Special Day Class – Severe	$9,746	$13,543

Figure 4
COS Program Funding Process

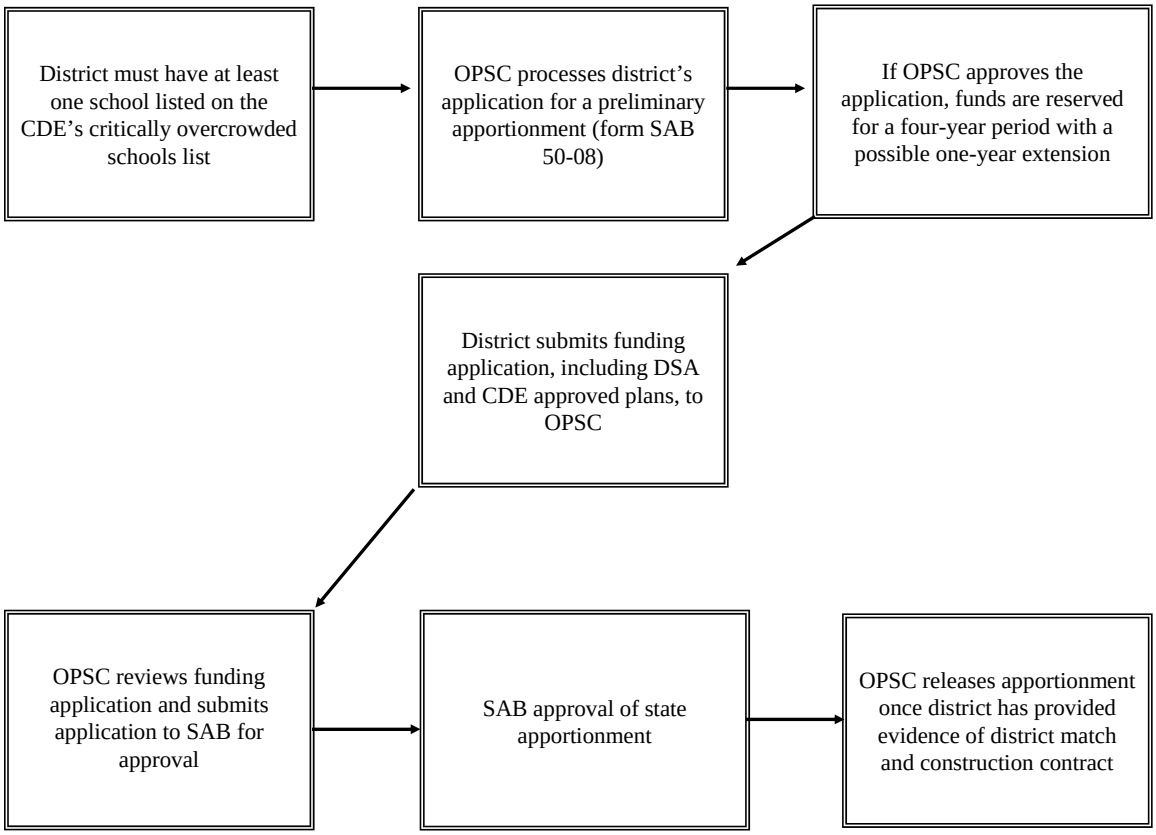

Table 6
Sources of Revenue for School Construction and Modernization, 1998 – Present

Source	Total Revenue ($ Billion)	Percentage
Local G.O. Bonds	38.4	53
State Aid (State Bond Apportionments)	21.9	31
Developer Fees	6.23	9
Mello-Roos and SFID's	0.71	1
Other	3.99	6
Total	71.22	100

Table 7
Revenue per Pupil by Source, 1998 – Present

Revenue Source	Unified Districts	Elementary Districts	High School Districts
Local G.O. Bonds	$4,051	$3,293	$6,951
State Aid	3,496	3,429	4,735
Developer Fees	1,175	1,077	1,408
Total	9,658	8,246	13,817
Districts	331	548	83
Average Enrollment	12,896	2,127	6,273

Table 8
Distribution of Revenue per Pupil, 1998 – Present

	Percentiles*				
Revenue Source	10	25	50	75	90
Unified Districts					
Local G.O. Bonds	0	1,639	4,979	12,200	16,883
Local G.O. Bonds + State Aid	3,012	5,791	8,475	16,202	19,743
Total	4,274	7,580	10,283	18,211	20,270
Elementary Districts					
Local G.O. Bonds	0	0	1,487	4,874	7,786
Local G.O. Bonds + State Aid	663	1,913	5,752	8,806	11,643
Total	1,278	3,193	7,223	11,045	15,263
High School Districts					
Local G.O. Bonds	0	5,171	7,666	11,154	17,960
Local G.O. Bonds + State Aid	4,585	8,228	12,790	17,345	22,075
Total	6,637	10,987	14,877	22,033	26,567

* Percentiles are weighted by district enrollment.

Table 9
Distribution of Revenue per Pupil by Quintiles of Enrollment Growth*

Revenue Source	First Quntile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than 0.8%	0.8% - 8.0%	8.1% - 9.3%	9.4% - 18.0%	Greater than 18.0%
Local G.O. Bonds	4,032	3,890	4,770	4,109	4,098
State G.O. Bonds	2,425	2,625	2,842	4,021	6,559
Total	7,960	8,319	9,031	10,143	14,725
Elementary Districts	Less than -4.0%	-4.0% - 3.6%	3.7% - 10.4%	10.5% - 21.0%	Greater than 21.0%
Local G.O. Bonds	2,715	4,897	4,956	2,226	2,534
State G.O. Bonds	2,512	2,518	3,160	4,638	5,660
Total	6,304	8,612	9,493	8,235	10,925
High School Districts	Less than 9.7%	9.7% - 17.4%	17.5% - 24.0%	24.1% - 33.7%	Greater than 33.7%
Local G.O. Bonds	4,384	8,445	8,749	7,828	8,642
State G.O. Bonds	3,937	4,402	4,709	5,114	7,980
Total	10,210	14,285	16,030	14,484	20,836

* Quintiles are weighted by student enrollment

Table 10
Distribution of Revenue per Pupil by Quintiles of Previous Facilities Investment*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than $5,500	5,500 - 6,000	6,001 - 6,800	6,801 - 9,260	Greater than 9,260
Local G.O. Bonds	4,277	4,132	4,846	2,966	4,241
State G.O. Bonds	3,253	3,719	3,302	3,687	3,740
Total	9,087	9,346	10,266	8,980	10,853
Elementary Districts	Less than $5,000	5,000 - 6,390	6,391 - 7,816	7,817 - 10,030	Greater than 10,030
Local G.O. Bonds	4,656	3,638	3,369	2,211	2,467
State G.O. Bonds	4,143	3,496	2,983	4,113	2,294
Total	9,941	8,359	7,529	8,108	6,579
High School Districts	Less than $5,950	5,950 - 7,730	7,731 - 9,440	9,441 - 11,730	Greater than 11,730
Local G.O. Bonds	11,565	9,147	7,016	3,957	3,869
State G.O. Bonds	6,203	4,243	4,541	4,707	4,133
Total	19,575	14,994	13,261	11,559	10,702

* Quintiles are weighted by student enrollment

Table 11
Distribution of Revenue per Pupil by Quintiles of Median Household Income*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than $36,640	36,640 - 40,415	40,416 - 47,395	47,396 - 57,390	Greater than 57,390
Local G.O. Bonds	2,816	3,289	4,402	3,670	6,300
State G.O. Bonds	2,553	3,944	4,133	3,589	4,009
Total	6,481	9,241	11,685	9,628	12,681
Elementary Districts	Less than $34,700	34,700 - 42,080	42,081 - 48,560	48,561 - 65,700	Greater than 65,700
Local G.O. Bonds	1,772	2,188	1,422	3,418	9,685
State G.O. Bonds	3,660	2,750	3,681	2,975	3,963
Total	6,206	6,259	6,589	7,992	16,374
High School Districts	Less than $36,000	36,000 - 43,780	43,781 - 50,266	43,782- 67,400	Greater than 67,400
Local G.O. Bonds	4,036	4,933	7,205	8,504	17,102
State G.O. Bonds	4,323	5,813	3,344	4,455	5,520
Total	10,196	13,136	12,366	16,135	24,186

* Quintiles are weighted by student enrollment

Table 12
Distribution of Revenue per Pupil by Quintiles of Assessed Value per Pupil*

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than $367	367.1 - 467.9	468 - 508	508.1 - 800	Greater than 800
Local G.O. Bonds	2,053	3,304	4,960	4,155	6,535
State G.O. Bonds	3,438	3,976	3,403	3,634	3,636
Total	6,889	9,200	10,277	9,702	13,507
Elementary Districts	Less than $330	330 - 518	518.1 - 685	685.1 - 1,140	Greater than 1,140
Local G.O. Bonds	757	1,443	1,727	1,449	8,524
State G.O. Bonds	3,766	3,722	4,153	2,967	2,885
Total	5,219	6,009	6,954	5,852	13,602
High School Districts	Less than $910	910 - 1,115	1,115.1 - 1,380	1,380.1 - 2,200	Greater than 2,200
Local G.O. Bonds	4,333	5,826	6,599	6,072	13,416
State G.O. Bonds	5,481	4,803	4,324	5,164	4,297
Total	11,983	12,172	13,166	13,059	20,156

* (1) Quintiles are weighted by student enrollment, (2) Assessed Value per Pupil is in 1,000 of dollars

Figure 5
Assessed Value per Pupil (2005) and Local G.O. Bond Revenue per Pupil

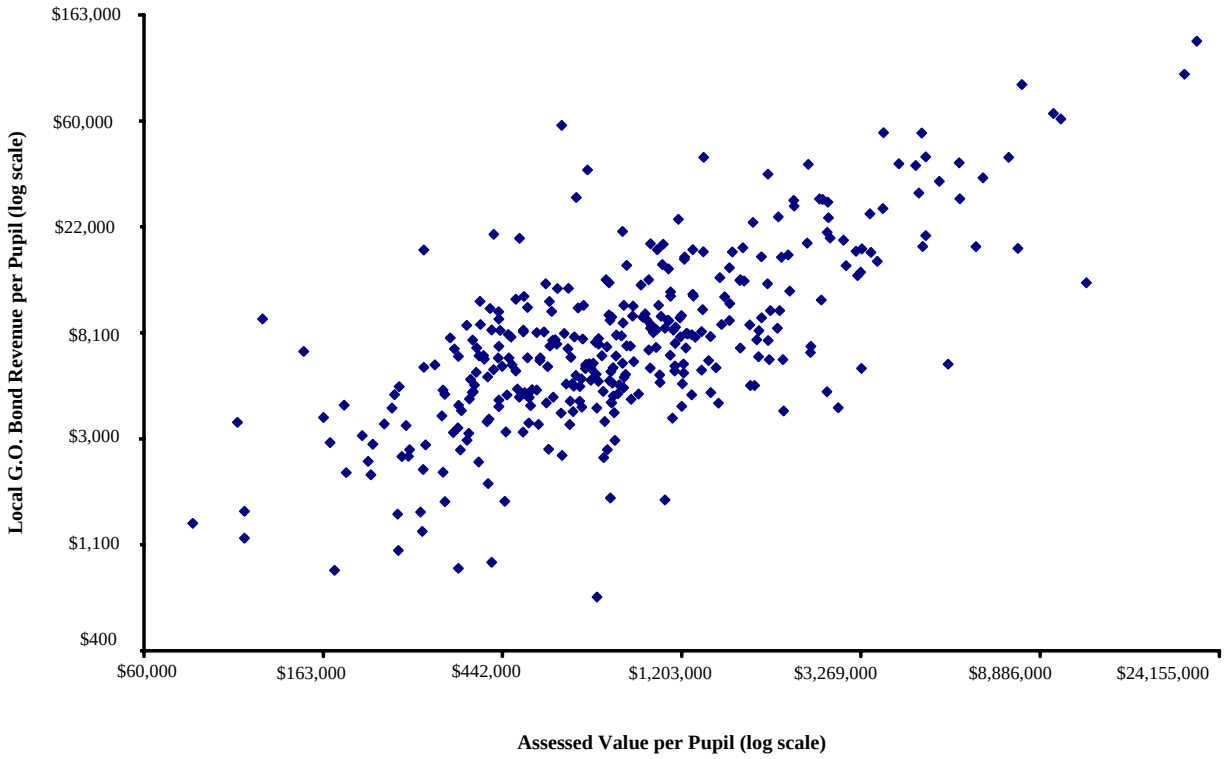

Table 13
Distribution of Revenue per Pupil by Quintiles of Percentage of Minority Students *

Revenue Source	First Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Unified Districts	Less than 45.0%	45.0% - 68.4%	68.5% - 83.4%	83.5% - 91.0%	Greater than 91.0%
Local G.O. Bonds	4,166	4,110	3,666	4,644	3,637
State G.O. Bonds	3,154	3,871	3,406	4,122	3,768
Total	9,556	10,364	9,469	9,944	8,821
Elementary Districts	Less than 38.0%	38.0% - 61.2%	61.3% - 77.5%	77.6% - 91.5%	Greater than 91.5%
Local G.O. Bonds	3,795	2,400	2,586	4,436	2,425
State G.O. Bonds	3,556	3,471	2,995	3,201	3,031
Total	8,791	7,840	6,918	9,001	6,215
High School Districts	Less than 44.0%	44.0% - 62.2%	62.3% - 71.0%	71.1% - 85.3%	Greater than 85.3%
Local G.O. Bonds	5,799	9,771	8,862	5,639	6,865
State G.O. Bonds	4,881	4,358	5,756	3,934	5,027
Total	12,836	16,483	18,480	10,935	12,987

* Quintiles are weighted by student enrollment

Table 14
Regression Estimates
Coefficient/(Standard Error)

Variable	Total Revenue per Pupil	Bond Revenue per Pupil	Probability of a Successful Bond Election
Assessed Value per Pupil	0.56**	0.77**	0.62**
	(0.13)	(0.06)	(0.14)
Income	0.27	0.20*	-0.21
	(0.24)	(0.11)	(0.29)
Enrollment Growth	0.76**	0.17*	0.24
	(0.19)	(0.09)	(0.21)
Prior Investment	-0.46**	-0.06	-0.64**
	(0.14)	(0.06)	(0.16)
Percent Minority	-0.03	0.57**	0.70**
	(0.07)	(0.13)	(0.32)
Total Enrollment	0.53**	-0.05**	0.54**
	(0.05)	(0.02)	(0.07)
Elementary District	0.08	-0.29**	-0.38**
	(0.15)	(0.07)	(0.19)
High School District	0.16	-0.17	-0.06
	(0.23)	(0.11)	(0.31)
Constant	-2.11	-2.25**	-4.95*
	(2.26)	(1.10)	(2.85)
R-Squared	0.28	0.57	0.19
Observations	904	386	904

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 15
Predicted Total Revenue per Pupil

Variable	Predicted Revenue 25th Percentile	Predicted Revenue 75th Percentile	75th - 25th
Enrollment Growth	3,144	3,741	597
Prior Investment	4,218	3,016	-1,201
Assessed Value per Pupil	2,590	4,654	2,064
Income	3,283	3,802	519
Fraction Minority	3,586	3,525	-61

Table 16
Critically Overcrowded and Multi-Track Schools, 2004-05

	All Schools		Other than LA Unified		LA Unified	
	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools	Percent in Critically Overcrowded Schools	Percent in Critically Overcrowded or Multi-Track Schools
All	16	22	7	14	78	79
White	5	9	3	8	54	55
African American	22	30	12	22	70	71
Hispanic	23	30	10	18	83	84
Nonwhite	21	27	10	17	80	81
Free/Reduced Price Lunch	24	31	11	19	82	83

Table 17
Characteristics of Critically Overcrowded and Multi-Track Schools, 2004-05

	All Schools		Other than LA Unified		LA Unified	
	Critically Overcrowded or Multi-Track Schools	All Other Schools	Critically Overcrowded or Multi-Track Schools	All Other Schools	Critically Overcrowded or Multi-Track Schools	All Other Schools
White	13.2%	36.4%	18.4%	36.9%	6.2%	19.0%
African American	11.0	7.1	11.4	6.7	10.4	15.9
Hispanic	65.3	41.7	56.0	41.3	77.7	54.9
Nonwhite	86.8	63.6	81.6	63.0	93.8	81.0
Free/Reduced Price Lunch	73.2	45.2	64.7	44.7	84.5	63.7

Table 18
Facility Revenue per Pupil, Critically Overcrowded and Multi-Track Schools

Revenue Source	Districts with Critically Overcrowded Schools	Districts with Critically Overcrowded or Multi-Track Schools	All Other Districts	Los Angeles Unified
Local G.O. Bonds	5,722	4,223	3,825	16,883
State Aid	3,974	4,133	3,495	2,860
Total	11,323	10,459	9,061	20,270
COS Preliminary Apportionment	531	228	…	3,761
Number of Districts	46	107	855	1

Table 19
Charter School Facility Program Grant Amounts and Caps on Funding

Per-Pupil Grant Amounts

Type of Student	Per-Pupil Grant
Elementary	$5,870
Middle School	$6,214
High School	$8,116
Special Day Class – Non-Severe	$12,509
Special Day Class – Severe	$18,703

Limit on Number of Pupil Grants Requested

Type of School	Maximum Number of Students Funded per Project
Elementary	350
Middle School	450
High School	600

Limit on Amount of Funding by Geography

Type of School	Total Project Funding ($ million)
Non-Urban Elementary	5
Non-Urban Middle School	7
Non-Urban High School	10
Urban Elementary	6.6
Urban Middle School	9
Urban High School	12.9

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Appendix

Table 1A
Regression Estimates: Total Revenue per Pupil
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.69**	0.56**	-0.31
	(0.21)	(0.17)	(0.33)
Income	-0.55	0.56*	1.40**
	(0.51)	(0.29)	(0.63)
Enrollment Growth	1.24**	0.49**	3.28**
	(0.37)	(0.23)	(1.39)
Prior Investment	-0.39*	-0.43**	-1.46**
	(0.22)	(0.18)	(0.46)
Percent Minority	0.08	-0.07	-0.19
	(0.51)	(0.08)	(0.16)
Total Enrollment	0.51**	0.57**	0.16
	(0.10)	(0.07)	(0.19)
Constant	4.39	-5.61**	10.12**
	(5.34)	(2.68)	(3.77)
R-Squared	0.26	0.25	0.38
Observations	307	517	80

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 2A
Regression Estimates: Local G.O. Bond Revenue per Pupil
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.62**	0.75**	0.69**
	(0.09)	(0.07)	(0.20)
Income	0.02	0.28*	0.24
	(0.16)	(0.15)	(0.38)
Enrollment Growth	0.21**	0.10	0.98
	(0.10)	(0.16)	(0.59)
Prior Investment	-0.06	-0.08	-0.21
	(0.10)	(0.09)	(0.20)
Percent Minority	0.38	0.51**	0.91**
	(0.24)	(0.18)	(0.34)
Total Enrollment	0.05	-0.12**	-0.11
	(0.04)	(0.03)	(0.07)
Constant	0.08	-3.29**	-1.05
	(1.78)	(1.47)	(3.54)
R-Squared	0.35	0.71	0.48
Observations	178	160	48

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Table 3A
Regression Estimates: Probability of a Successful Bond Election
Coefficient/(Standard Error)

Variable	Unified	Elementary	High School
Assessed Value per Pupil	0.51**	0.75**	-0.22
	(0.23)	(0.19)	(0.70)
Income	-0.79	-0.03	0.71
	(0.49)	(0.39)	(1.35)
Enrollment Growth	0.34	0.12	3.81*
	(0.37)	(0.26)	(2.13)
Prior Investment	-0.59**	-0.68**	-1.42*
	(0.28)	(0.20)	(0.77)
Percent Minority	0.33	0.80*	0.24
	(0.58)	(0.42)	(0.57)
Total Enrollment	0.51**	0.57**	0.53*
	(0.11)	(0.09)	(0.32)
Constant	2.88	-8.91	4.13
	(4.82)	(3.74)	(11.70)
R-Squared	0.09	0.19	0.23
Observations	307	517	80

Notes: (1) Robust standard errors in parentheses, (2) ** Significant at 5% level, (3) * Significant at 10% level

Chapter 5

New School Facilities

Even before the passage of Proposition 13 in 1978, school budgets were largely determined by the state in compliance with the California Supreme Court's decision in *Serrano v. Priest* (1976) 18 C.3d 728. In that landmark case the court held that the California public school financing scheme violated constitutional equal protection guarantees by basing the availability of school revenues upon district wealth. The aftermath of the Serrano decision was state equalization of each district's allowable revenue limit and apportionment of state aid funds as the difference between that revenue limit and the district's proportional share of the county's local property tax revenues. Districts which receive a relatively greater share as a result of property tax revenues receive less money from the state.

Nonetheless, prior to Proposition 13 schools traditionally relied upon property taxes as a major revenue source. Proposition 13 affected schools by reducing this local income and making them more dependent upon state funding. Impact fee legislation passed in the early 1980's to fund interim school facilities provided some relief, but required the cooperation of affected cities and counties in levying a fee (revenue would be collected by the city or county and then transferred to the district). The 1984 California State Lottery Act provided schools with a new income source. However, lottery funds cannot be used for capital improvements such as school buildings (Government Code section 8880).

Today, squeezed between reduced property tax derived income and increased population, schools are employing several alternatives for funding new school construction. The following methods give school districts some measure of local control over financing.

Developer Fees

Unlike cities and counties, school districts do not have independent police power authority to impose development fees. Their authority to impose this kind of fee derives solely from Government Code section 53080 (note: in 1998, this section will be recodified as Education Code section 17620, pursuant to SB 1562 of 1996) and is subject to the limits discussed below (*California Building Industry Association v. Newhall School District, etc. et al.* (1988) 206 Cal.App.3d 212).

In 1986, the State Legislature approved AB 2926 (Chap. 887) which authorized school districts to levy development fees and at the same time placed a cap on the total amount of fees that could be levied. This method of financing new facilities immediately came into widespread use. In brief, it enables school districts to

directly impose developer fees to pay for new school construction (Government Code section 53080). It also establishes that the maximum fees (adjustable for inflation) which may be collected under this and any other school fee authorization are $1.50/square foot of residential development and $0.25/square foot of commercial and industrial space (Government Code section 65995).

Legislative actions since 1986 have alternatively expanded and contracted the limits placed on school fees by AB 2926. In addition, AB 1600 of 1987 (discussed in Chapter II) has established a requirement that there be a nexus between school fees and the impacts created by new development. The current state of school exactions is summarized in the following paragraphs.

School districts may only impose fees, charges and dedications upon new industrial or commercial and new or other residential development as follows:

- Exactions shall be limited to $1.50 per square foot of "assessable space" for residential projects and $0.25 per square foot of "chargeable covered and enclosed space" for commercial or industrial projects. These amounts will be adjusted for inflation every two years. (Government Code section 65995) These limits apply to administrative actions which impose fees on development projects.
- New residential development shall be assessed on the basis of the number of square feet within the perimeter of the structure, not including any carport, walkway, garage, overhang, patio, detached accessory structure, or other similar area ("assessable space" under Government Code section 65995 (b)(1)).
- Fees, charges or dedications for other residential development can only be imposed if the development will result in a net increase in assessable space of 500 square feet or more. (Government Code section 53080).
- For purposes of determining the amount to be charged to industrial or commercial development, the square foot area of any structure existing on the site as of issuance of the first building permit shall not be counted. (Government Code section 53080).
- The fees, etc. collected pursuant to this statute cannot be used for regular maintenance or repair of school buildings or facilities, asbestos testing or removal activities, nor for deferred maintenance. These fees may, however, be used to pay for certain limited administrative costs. (Government Code section 53080).
- Commercial development shall be assessed on the basis of the number of square feet within the building perimeter, not including storage areas, parking structures, unenclosed walkways, or utility areas ("chargeable covered and enclosed space" under Government Code section 65995 (b)(2)).
- A school district may require fees from commercial or industrial development on either an individual basis or on the basis of categories of commercial or industrial development. Prior to imposing the fee, the district must conduct a study to determine the impact of the anticipated increase in commercial or industrial employees on the cost of providing school facilities. This study forms the basis of the district's findings under section 66000 et seq.

The study must include employee generation estimates that are made by the district or based on the January 1990 edition of "San Diego Traffic Generators," a report of the San Diego Association of Governments. (Government Code sections 53080.1) Similar requirements were discussed in *Balch Enterprises v. New Haven Unified School District* (1990) 219 Cal.App.3d 783 which overturned commercial and industrial development fees imposed by a school district in Hayward and Union City.

If fees are charged, the district must also provide the opportunity to appeal those fees on an individual basis. The

party making the appeal carries the burden of proving that the fee was improper (Government Code section 53080.1).

- The school board may contract with the affected city or county for the purpose of having the city or county collect these exactions on behalf of the school district. (Government Code section 53080).
- The school board must hold a noticed public hearing prior to adopting or increasing a development exaction. The resolution enacting the exaction must contain findings in accordance with the provisions of Government Code sections 66000 et seq. In particular, the district must describe the impacts upon school facilities anticipated as a result of the commercial or industrial development. Upon adopting a resolution, the school board must notify all affected cities and counties in detail.

A resolution imposing development exactions takes effect 60 days after its passage. The statute allows a school board, upon four-fifths vote of its membership, to pass an urgency resolution imposing the exaction immediately. Any party upon which an exaction is imposed may protest or appeal the exaction. (Government Code section 53080.1).

- When notified of a school facility fee, a city or county must not issue a building permit to an affected development project until the school district has certified that the project has either paid the fee or is not subject to the exaction. (Government Code section 53080). School fees are not subject to the requirement of Government Code section 66007 that restricts fee collection to that time when a final inspection is made of the project or a certificate of final occupancy is issued (*RRLH, Inc. v. Saddleback Valley Unified School District* (1990) 222 Cal.App.3d 1602).
- Exactions under section 53080 shall not be levied on the reconstruction of any residential, commercial, or industrial structure destroyed as the result of a disaster such as a fire, earthquake, landslide, flood, or tidal wave. Exactions can be levied on that portion of the reconstructed structure, if any, that exceeds the square footage of the original structure. (Government Code section 53080.6).
- Exactions levied on new construction of senior citizen housing, a residential care facility for the elderly or a multilevel facility for the elderly are limited to $0.25 per square foot of chargeable covered and enclosed space. Such structures may be issued building permits allowing them to be converted to another use upon certification by the school district that all required school facilities exactions have been paid. (Government Code section 65995.1).
- Motels, hotels, inns and other short-term lodgings are considered to be commercial or industrial development for the purposes of section 53080. (Government Code section 65995).
- Exactions cannot be levied on a facility that is used exclusively for religious worship, owned and occupied by state, federal or local government, or is used exclusively as a private full-time day school. (Government Code section 65995).

The School Facilities Act (Government Code section 65970) provides a means for overcrowded school districts to receive fees for interim school facilities necessitated by new residential development. Such districts, upon making written findings of overcrowding and establishing a schedule of fees to pay for the interim facilities, must request that the local city council or board of supervisors adopt an ordinance imposing such fees. Fees are collected by the local government, placed in a separate account for the school district, and disbursed to the district each year.

The Schools Facilities Act differs from AB 2926 in that the district must be deemed overcrowded by the local school board in order for exactions to be levied. Further, the fee is always levied and collected by the local city

or county on behalf of the school district (and upon the district's request). Previously, fees collected under the School Facilities Act could only be used for interim facilities. However, new law now enables a school district board that receives fees collected under a local regulation in existence on September 1, 1986 to use those funds for any "construction or reconstruction" allowable under section 53080, provided that the board first holds a public hearing on the subject of the proposed expenditure (Government Code section 65974.5).

AB 2926, on the other hand, is not restricted to overcrowded districts, the resulting funds may be used for either interim or permanent facilities, and fees are imposed directly by the school district. Because AB 2926 allows for the funding of permanent facilities, it has generally supplanted the use of the School Facilities Act.

School fees are subject to certain additional statutory restrictions:

- The legislature has declared that the subject of financing school facilities with development fees is a matter of statewide concern. Accordingly, the legislation described above occupies the field of mandatory development fees for school construction to the exclusion of all other local ordinances. (Government Code section 65995).
- The fee nexus and accounting requirements of the Mitigation Fee Act (Government Code section 66000 et seq.) apply to all school district exactions. The court in Shapell Industries v. Governing Board of the Milpitas Unified School District (1991) 1 Cal.App.4th 218 held that the developer is responsible only for that share of school need caused by new development, and set forth a three-part method for determining fees. First, since the fee is to be assessed per square foot of development, there must be a projection of the total amount of new housing expected to be built within the district. Second, in order to measure the extent of the burden imposed on schools by new development, the District must determine approximately how many students will be generated by the new housing. And finally, the District must estimate what it will cost to provide the necessary school facilities for that approximate number of new students. As noted in Chapter IV, the *Loyola Marymount* case has held that the higher scrutiny of the two-part *Nollan/Dolan* test does not apply to school fees.
- The fee cap established under these laws is the total amount of fees which may be levied for school facilities (Government Code section 65995). This includes fees intended to mitigate an environmental effect under the California Environmental Quality Act (Government Code section 65996). The fee cap does not apply to special taxes imposed under the Mello-Roos Community Facilities Act (Government Code section 65995; *Western/California Ltd. v. Dry Creek Joint Elementary School District* (1996) 50 Cal.App.4th 1461).
- When a school district establishes a Mello-Roos Community Facilities District (CFD) to finance the acquisition or improvement of school facilities, the property within that CFD is exempted from paying "any fee or other requirement" levied to benefit another school district if the fee was levied after the resolution of formation of the CFD was adopted. The affected school districts can, however, mutually agree upon other arrangements. This law took effect on September 30, 1989. (Government Code section 53313.4).
- Fees imposed on any mobilehome or manufactured home located within a mobilehome park or mobilehome subdivision that is limited to residence by older persons, cannot exceed those imposed on commercial or industrial development. If such a mobilehome park or mobilehome subdivision subsequently decides to permit residents other than older persons, it must notify the affected school district. Subsequent home installations for younger persons will be subject to residential fees. (Government Code section 65995.2).

Mello-Roos Act

The Mello-Roos Community Facilities District Act (Government Code section 53311 et seq.) allows financing districts to be established to fund school construction. The owners of land within the boundaries of a Mello-Roos Community Facilities District (CFD) are assessed a special tax to finance specific improvements within that district. Mello-Roos special taxes must be approved by 2/3 of the voters within the proposed CFD or, when the district has fewer than 12 property owners, by majority vote of the owners. Property owner elections may be held by mailed ballot, when approved by the county registrar of voters. The Rocklin Unified School District used this method in February 1989 when it created a 4454-acre Mello-Roos district to fund school construction in a rural area slated for rapid development. This taxing district will help finance six new K-6 schools and cost the eventual homeowners up to $400 per year. Proceeds from a Mello-Roos tax can be used to directly fund improvements such as new schools and also, if bonds have been issued, pay debt service on those bonds.

Mello-Roos financing affects the matching funds available from the State for school construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976. Under certain conditions, the amount of matching funds that the local school district must put up will be reduced by the amount of funding received as a result of CFD special taxes (Education Code section 17705.6). In effect, the funding provided by the CFD is counted toward the local matching share.

One advantage of the Mello-Roos Act over other sorts of financing is that it allows a school district to establish a financing district that does not include all the land within the boundaries of the school district. This means that newly developing areas, where demand for additional school facilities is greatest, can be isolated from those parts of the district in which facilities are adequate or where demand is otherwise low.

The Elk Grove Unified School District in Sacramento County made good use of this aspect of the Mello-Roos Act when faced with neighborhood opposition to its proposed special tax and school bonds. After its first attempt at forming a Mello-Roos CFD failed narrowly, the Elk Grove USD redrew the boundaries of the proposed financing district to eliminate mobilehome parks where citizens tended to be elderly and generally in opposition to the special tax. On its second attempt, the Mello-Roos district and its maximum bond issue limit of $70,000,000 were successfully ratified. The proceeds of the CFD will be used in conjunction with developer fees and state funds to meet the district's planned facility needs.

As of the end of 1988, the following were among the school districts using Mello-Roos financing:

- Chino Unified School District;
- Corona-Norco Unified School District;
- Elk Grove Unified School District;
- Empire Union School District (Stanislaus County);
- Etiwanda School District (San Bernardino);
- Fairfield-Suisun Unified School District;
- Irvine Unified School District;
- Mountain View School District;
- Oroville Elementary School District;
- Riverside Unified School District;
- Saddleback Valley Unified School District (Orange County);
- Sacramento City Unified School District;

- Tracy Area Public Facilities Financing Agency;
- Vallejo City Unified School District;
- Val Verde School District (Riverside County); and
- William S. Hart Union High School District

By the end of 1988, approximately $175 million worth of Mello-Roos bonds had been issued to finance school construction or for other educational uses. Of this total, approximately $85 million worth were sold in 1988 alone.

General Obligation Bonds

As a result of the passage of Proposition 46 in 1986, cities, counties, and school districts are again empowered to issue general obligation (G.O.) bonds to finance land acquisition and capital improvements, subject to voter approval. G.O. bonds are repaid with the revenues from increased property taxes (authorized by local voters as part of the G.O. bond measure). Approval by two-thirds of the voters within the school district is required for passage of a G.O. bond measure.

Statewide, the rate of passage for G.O. bond issues has averaged about 50%. The success rate was substantially higher in the first half of 1997. The amount of money being raised by bonds is considerable. Some $327 million worth of school bonds were approved in five Los Angeles basin districts in the June 1997 election alone.

Special Taxes

School districts may impose special taxes in the same manner as counties and cities, provided that the tax applies uniformly to all taxpayers or all real property within the district. This rule of uniformity contains an exception allowing taxpayers 65 years of age or older to be exempted from this kind of special tax. Under the provisions of Government Code section 50079, "qualified special taxes" (also called parcel taxes) may only be imposed when 2/3 of the school district's voters approve the school board's specific proposal for such a tax.

Proposition 218 has defined school districts as "special districts" for purposes of defining the type of taxes which a school district may impose and the voting requirements for those taxes. Under Article XIIIC of the California Constitution, a school district "shall have no power to levy general taxes." Taxes imposed by a school district, even if placed into the general fund of that district, are considered "special taxes" and cannot be imposed, extended or increased without approval of 2/3 of the district's voters.

According to information compiled by the School Service of California and Cal-Tax, 63 special tax elections for schools were held during the period between 1983 and April of 1988 with one-in-three being approved. Taxes proposed since that time have fared similarly

California Building Industry Association v. Newhall School District (1988) 206 Cal.App.3d 212 illustrates how careful school districts must be when creating a special tax. In overturning alleged special taxes in five Santa Clarita Valley school districts the Court of Appeal concluded that they were not special taxes because: (1) they applied solely to developers rather than uniformly to all taxpayers or landowners in the district; (2) they could be characterized as a development fee because they did not exceed the cost of contemplated school facilities and were imposed solely on those who were seeking to develop land; and, (3) at that time, school districts had no

specific legislative authorization to levy special taxes (this has since been rectified by Government Code section 50079). Furthermore, the court held that because the exaction exceeded the limits imposed on development fees by Government Code section 65995, it was not valid as a development fee either.

Grupe Development Co. v. Superior Court (1993) 4 Cal.4th 911 is a recent court case which rules out the use of special taxes in districts which have levied full developer fees. In overturning a special tax levied by the Chino Unified School District, the state Supreme Court concluded that Government Code Section 65995 preempts all school district authority to levy special taxes for school construction if such taxes would cause the district to exceed the fee cap stipulated in the code, even though special taxes except for Mello-Roos taxesare not explicitly mentioned in the code. This decision was based on the language of section 65995 which placed a cap on fees of $1.50 per square foot of accessible space in residential dwellings. While exempting Mello-Roos taxes from this limit, the court concluded that as a matter of statutory construction, the explicit exemption of Mello-Roos special taxes indicated that the cap applied to all other special taxes. The court held that the intent of the legislature was to strike a balance between the need for adequate school facilities and affordable housing. The court said that "It would manifestly upset that balance to construe section 65995 to allow school districts to collect - as the District does here - special taxes to offset development costs *in addition to* the maximum amount authorized" under the code.

Special Assessments

In recent years, there has been a debate over whether a school district may impose assessments under the Landscaping and Lighting Act of 1972 for the maintenance of school yards. School districts have argued that they should be able to utilize the Act because they may be considered "special districts" for purposes of the Act and because they are authorized to undertake the sorts of improvements and carry out maintenance which the Act could finance. Further, they are statutorily authorized to make their facilities and grounds available for public use as civic centers and thereby offer a benefit to surrounding properties. Others have contended that the Act was not intended to apply to schools and in the absence of explicit reference, school districts should not be considered special districts under the Act.

The California Second District Court of Appeal rendered an opinion in May 1993 affirming the ability of two Southern California school districts to levy assessments to pay for the maintenance of school auditoriums, meeting rooms, gyms, stadiums, recreation and civic centers for the surrounding community (*Howard Jarvis Taxpayers Association v. Whittier Union School District* (1993) 15 Cal.App.4th 730). The court held that a school district is a special district for purposes of the 1972 Act. In addition, the levy of this special assessment by the districts does not violate the *Serrano* principle that limits the imposition of ad valorum property taxes that would make the quality of educational opportunity dependent upon the wealth of the school district's property owners. The assessment is not based on property value, but rather on the relative degree of benefit which a parcel derives from the community facilities provided by the school.

In this case, the assessments were not levied for educational purposes (which was not approved by the court), but to finance recreational improvements to benefit the community. The districts demonstrated this by limiting their assessments to that portion of the total facility use that could be attributed to community activities.

This case does not offer *carte blanche* to school districts for the use of the Landscaping and Lighting Act. It does illustrate that a carefully designed assessment, limited strictly to financing those community facilities which

the school provides, may offer an alternative financing method.

These assessments are subject to the voting requirements and are limited by Proposition 218 to properties which can be shown to derive a "special benefit" from the assessment (see Chapter III). Proposition 218 raises a substantial hurdle before districts that wish to use the Landscaping and Lighting Act.

Next: Chapter 6: Leasing

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STATUS OF FUND RELEASES *

General Obligation Bond/Proposition 1D (March 2009 Sale)

- In March 2009, the State Treasurer's Office received a disbursement of funds from General Obligation Bonds (GOB). The Office of Public School Construction (OPSC) has processed the following in fund releases and claim schedules to the State Controller's Office from the March bond sale ($528.8 million). The list below reflects the total proceeds disbursed as of December 31, 2010.

Proposition	Bond Proceeds Amount	Funds Released thru November 19, 2010	Funds Released thru December 31, 2010	Bond Proceeds Balance	Percent of Bond Proceeds Released
1D	$ 528.80	$ 528.73	$ 0	$ 0.07	99%

These projects were apportioned prior to December 17, 2008 and were not part of the unfunded approval list.

Total Projects: 234 out of 234 – 100% of projects scheduled to receive funds.
Total Districts: 84 out of 84 School Districts – 100% Districts.

General Obligation Bond (April 2009 Sale)

- In April 2009, the State Treasurer's Office received a disbursement of funds from the GOB (Build America Bonds). The OPSC has processed the following in fund releases and claim schedules to the State Controller's Office from the April bond sale ($1.4 billion). The list below reflects the total proceeds disbursed as of December 31, 2010.

Proposition	Bond Proceeds Amount	Funds Released thru November 19, 2010	Funds Released thru December 31, 2010	Bond Proceeds Balance	Percent of Bond Proceeds Released
1D	$ 587.7	$ 520.9	$ 8.8	$ 58.0	90%
55	428.5	397.0	0	31.5	93%
47	422.3	414.9	0.1	7.3	98%
Grand Total	$ 1,438.5	$ 1,332.8	$ 8.9	$ 96.8	93%

These projects were apportioned prior to December 17, 2008 and were not part of the unfunded approval list.

Total Projects: 382 out of 420 – 91% of projects scheduled to receive funds.
Total Districts: 151 out of 167 School Districts – 90% Districts.

General Obligation Bond (October 2009 Sale) and Commercial Paper (November 2009)

- In October 2009 and November 2009, the State Treasurer's Office received a disbursement of funds from the GOB (Build America Bonds & Taxable or Tax Exempt Bonds) in the amount of $484.3 million and Commercial Paper in the amount of $25.2 million. The OPSC has processed the following in fund releases and claim schedules to the State Controller's Office from the October 2009 and November 2009 sale ($509.5 million). The list below reflects the total proceeds disbursed as of December 31, 2010.

Proposition	Bond Proceeds Amount	Funds Released thru November 19, 2010	Funds Released thru December 31, 2010	Bond Proceeds Balance	Percent of Bond Proceeds Released
1D	$ 408.3	$ 214.5	$ 10.7	$ 183.1	55%
55	56.1	40.4	0	15.7	72%
47	45.1	13.4	0	31.7	30%
Grand Total	$ 509.5	$ 268.3	$ 10.7	$ 230.5	55%

These projects were apportioned prior to December 17, 2008 and were not part of the unfunded approval list.

Total Projects: 127 out of 254 – 50% of projects scheduled to receive funds.
Total Districts: 71 out of 133 School Districts – 53% Districts.

(Continued on Page Two)

General Obligation Bond (November 2009 Sale) and Commercial Paper (December 2009)

- In November 2009 and December 2009, the State Treasurer's Office received a disbursement of funds from the GOB (Tax Exempt Bonds) in the amount of $61.39 million and Commercial Paper in the amount of $50.0 million. The list below reflects the total proceeds disbursed as of December 31, 2010.

Proposition	Bond Proceeds Amount	Funds Released thru November 19, 2010	Funds Released thru December 31, 2010	Bond Proceeds Balance	Percent of Bond Proceeds Released
1D	$ 58.8	$ 54.7	$ 0	$ 4.1	93%
47	52.6	29.2	0	23.4	56%
Grand Total	$ 111.4	$ 83.9	$ 0	$ 27.5	75%

The projects activated at the February 24, 2010 SAB funds are released from residual proceeds received on the October 2009 bond sale, November 2009 bond sale, and December 2009 commercial paper. The tax certification was submitted to the State Treasurer's Office on March 10, 2010 and completed by the Treasurer's on April 15 and 19, 2010.

Total Projects: 33 out of 38 – 87% of projects scheduled to receive funds.
Total Districts: 26 out of 31 School Districts – 84% Districts.

General Obligation Bond (March 2010 Sale)

- In March 2010, the State Treasurer's Office received a disbursement of funds from the GOB (Tax Exempt Bonds) in the amount of $376.1 million and from the GOB (Build America Bonds) in the amount of $975.2 million. The list below reflects the total proceeds disbursed as of December 31, 2010.

Proposition	Bond Proceeds Amount	Funds Released thru November 19, 2010	Funds Released thru December 31, 2010	Bond Proceeds Balance	Percent of Bond Proceeds Released
1D	$ 757.1	$ 583.8	$ 0.3	$ 173.0	77%
55	353.3	264.7	0.1	88.5	75%
47	240.9	190.8	0	50.1	79%
Grand Total	$ 1,351.3	$ 1,039.3	$ 0.4	$ 311.6	77%

The projects activated at the April 28, 2010 SAB funds are released from March 2010 bond sale.
The tax certification was submitted to the State Treasurer's Office on April 28, 2010 and completed by the Treasurer's on April 28, 2010.

Total Projects: 236 out of 276 – 86% of projects scheduled to receive funds.
Total Districts: 139 out of 165 School Districts – 84% Districts.

General Obligation Bond (November 2010 Sale)

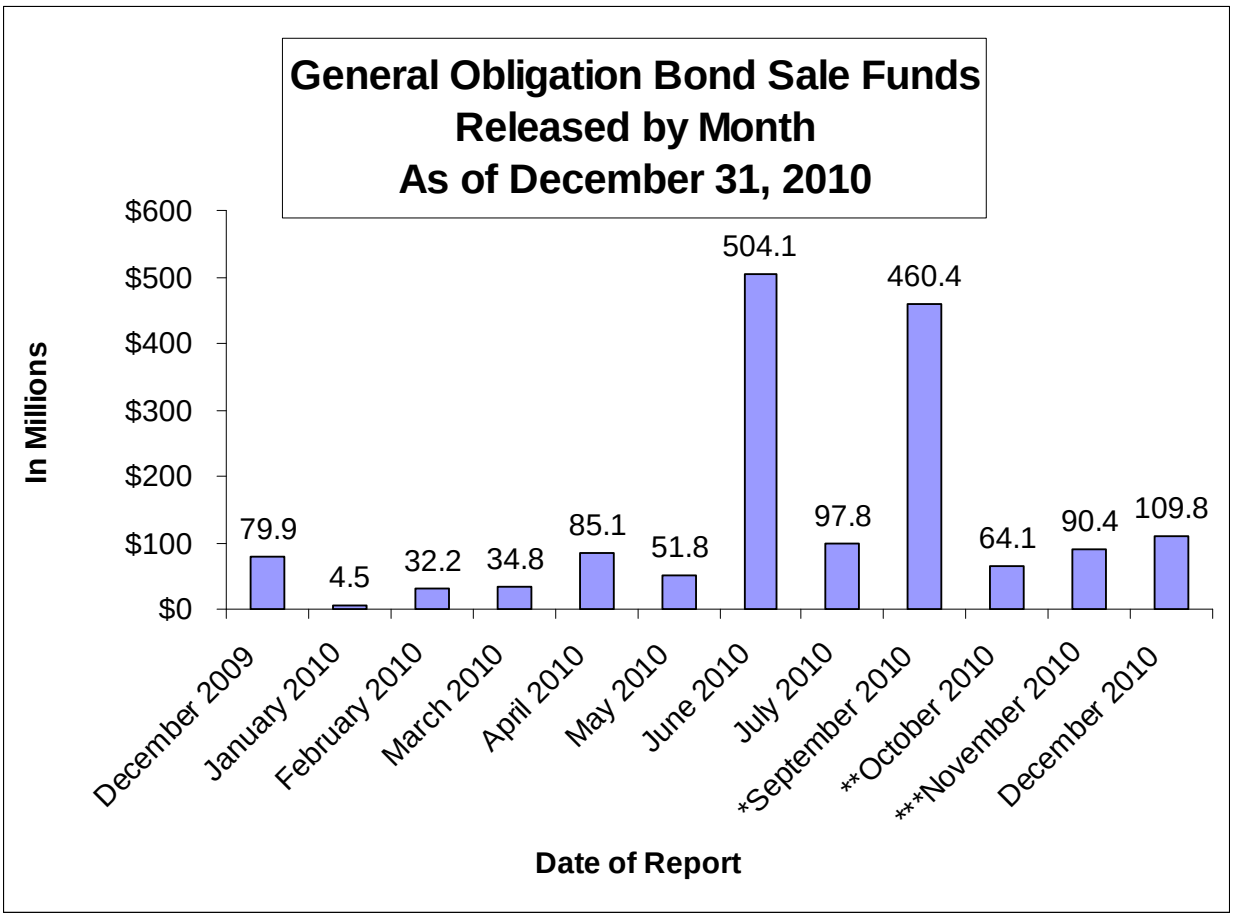
- In November 2010, the State Treasurer's Office received a disbursement of funds from the GOB (Taxable Bonds) in the amount of $116.6 million and from the GOB (Build America Bonds) in the amount of $1,366.5 million. The list below reflects the total proceeds disbursed as of December 31, 2010.

Proposition	Bond Proceeds Amount	Funds Released thru November 19, 2010	Funds Released thru December 31, 2010	Bond Proceeds Balance	Percent of Bond Proceeds Released
1D	$ 761.3	$ 0	$ 88.8	$ 672.5	12%
55	327.6	0	0	327.6	0%
47	394.2	0	1.0	393.2	0%
Grand Total	$ 1,483.1	$ 0	$ 89.8	$ 1,393.3	6%

Total Projects: 58 out of 443 – 13% of projects scheduled to receive funds.
Total Districts: 25 out of 198 School Districts – 13% Districts.

* The number of projects and districts for each bond sale will be adjusted on a monthly basis. This is due to projects receiving a grant apportionment or projects being rescinded.

(Continued on Page Three)

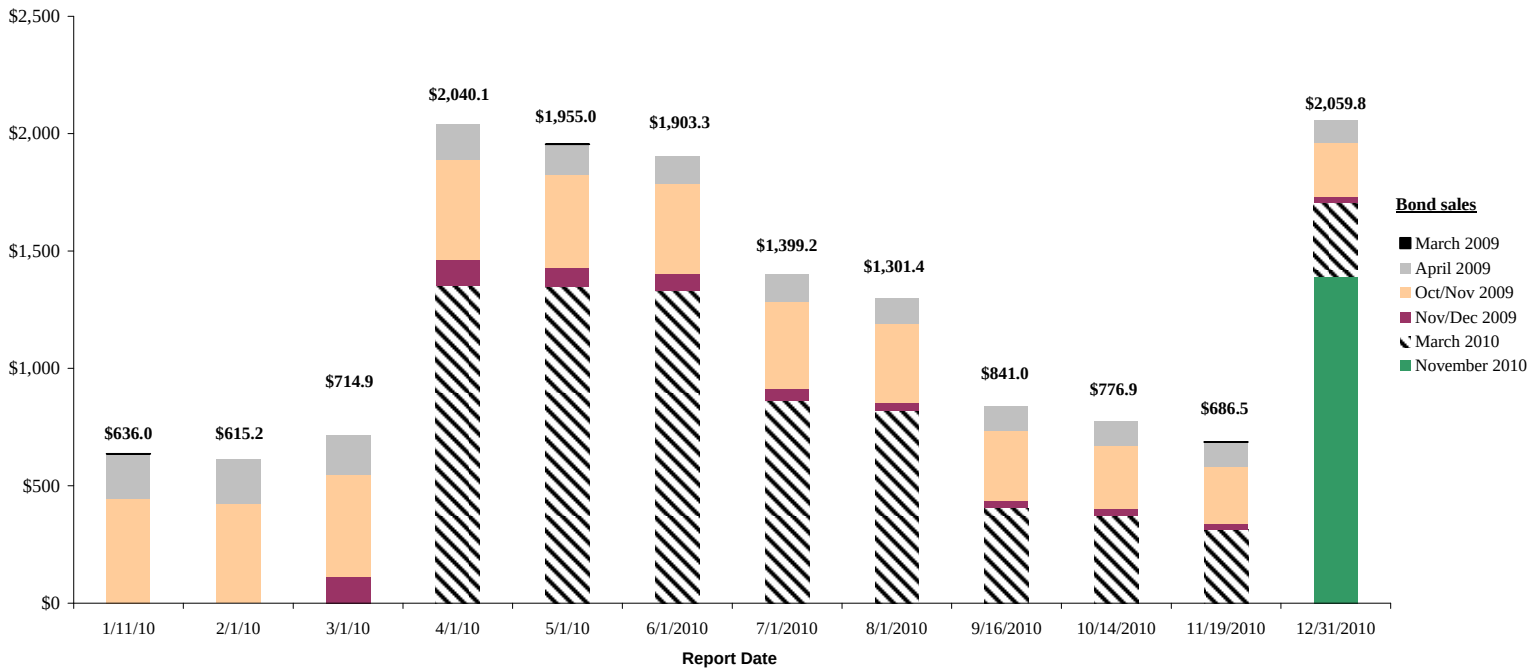


* Includes all fund releases through September 16, 2010.
** Includes all fund releases through October 14, 2010.
*** Includes all fund releases through November 19, 2010.

(Continued on Page Four)

School Facility Program Funds Available, as a Result of Bond Sales in 2009 and 2010

(in millions of dollars)



amount available in - - - - - - - >

	January 2010	February 2010	March 2010	April 2010	May 2010	June 2010	July 2010	August 2010	September 2010	October 2010	November 2010	December 2010
March 2009 sale	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000	$70,000
April 2009 sale	$192,100,000	$192,100,000	$168,100,000	$149,200,000	$131,100,000	$115,400,000	$115,300,000	$110,600,000	$106,200,000	$103,900,000	$105,700,000	$96,800,000
Oct/Nov 2009 sales	$443,800,000	$423,000,000	$435,300,000	$428,200,000	$395,200,000	$384,500,000	$371,300,000	$337,200,000	$301,400,000	$272,900,000	$241,200,000	$230,500,000
Nov/Dec 2009 sales	$0	$0	$111,400,000	$111,400,000	$81,900,000	$71,100,000	$49,200,000	$33,400,000	$28,100,000	$27,500,000	$27,500,000	$27,500,000
March 2010 sales	$0	$0	$0	$1,351,200,000	$1,346,700,000	$1,332,200,000	$863,300,000	$820,100,000	$405,200,000	$372,500,000	$312,000,000	$311,600,000
November 2010 sales	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$1,393,300,000
Total Funds Available	$635,970,000	$615,170,000	$714,870,000	$2,040,070,000	$1,954,970,000	$1,903,270,000	$1,399,170,000	$1,301,370,000	$840,970,000	$776,870,000	$686,470,000	$2,059,770,000

Of the 2009 bond sales ($2.6 billion), $354.9 million remains unspent as of December 31, 2010. Of the combined 2009-10 bond sales ($5.4 billion), $2.1 billion remains unspent as of December 31, 2010.

SCHOOL FACILITY PROGRAM

Available Funds (in Millions) As of January 26, 2011 *

(Rev. 1)

Program	Original Bond Allocation	Funds Available as of December 15, 2010 H	Estimated Approvals for January 26, 2011	Ending Balance as of January 26, 2011 (excludes Unfunded Approvals)	Accumulated Unfunded Approvals as of December 15, 2010 H	Estimated Unfunded Approvals for January 26, 2011	Ending Balance as of January 26, 2011 (includes Unfunded Approvals)
Prop. 1D - $7.3 Billion - November 2006							
New Construction	$1,900.0	$33.4	$1.7	$35.1	-$19.6	-$0.3	$15.2
Seismic Repair		199.5		199.5	-4.7		194.8
Modernization	3,300.0	1,394.2	0.2	1,394.4	-401.5	-53.5	939.4
Career Technical Education	500.0	116.6		116.6	-93.6		23.0
High Performance Schools	100.0	80.5		80.5	-10.9	-0.1	69.5
Overcrowding Relief	1,000.0	542.5		542.5	-89.6		452.9
Charter School	500.0	79.0	35.4	114.4	-60.0		54.4 B
Joint Use	57.5 C	0.6		0.6			0.6
SUBTOTAL	**$7,357.5**	**$2,446.3**	**$37.3**	**$2,483.6** A	**-$679.9**	**-$53.9**	**$1,749.8**
Prop. 55 - $10 Billion - March 2004							
New Construction	$5,177.5 E	$711.7 D, F	-$2.8	$708.9	-$396.5	-$144.5	$167.9 D
Energy		0.2		0.2			0.2
Modernization	2,250.0	5.5 D		5.5	-3.2		2.3 D
Critically Overcrowded Schools	2,228.3						
Reserve		59.8 F		59.8	-57.5		2.3
Charter School	300.0	45.5		45.5	-2.1		43.4
Relocation/DTSC Fees		13.1		13.1			13.1
Hazardous Material/Waste Removal		2.6		2.6			2.6
Conversion Increase Fund		23.4		23.4	-0.6		22.8
Joint Use	66.7 G						
SUBTOTAL	**$10,022.5**	**$861.8**	**-$2.8**	**$859.0** A	**-$459.9**	**-$144.5**	**$254.6**
Prop. 47 - $11.4 Billion - November 2002							
New Construction	$6,250.0	$99.2 D, F	$18.4	$117.6	-$74.0	$13.8	$57.4 D
Energy		0.6		0.6			0.6
Modernization	3,300.0	2.3 D	$0.2	2.5	-2.0		0.5 D
Critically Overcrowded Schools	1,700.0						0.0
Charter School	100.0	46.2		46.2	-46.1		0.1
Conversion Increase Fund		15.6		15.6			15.6
Joint Use	50.0						
SUBTOTAL	**$11,400.0**	**$163.9**	**$18.6**	**$182.5** A	**-$122.1**	**$13.8**	**$74.2**
TOTAL PAGE 1	**$28,780.0**	**$3,472.0**	**$53.1**	**$3,525.1**	**-$1,261.9**	**-$184.6**	**$2,078.6**

* This table does not reflect the Board's approval of October 2010 Priority Funding Round Apportionments.

A Balance of bonding authority excludes unfunded approvals.

B 12.5 million not available. Reserved for California School Finance Authority Administrative Costs, subject to annual Budget Act approval.

C The Original bond allocation of $29 million augmented by $21 million from Prior Bond Funds to Joint Use at the 06/27/07 SAB meeting and $7.5 million at the 7/23/08 SAB meeting pursuant to Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez).

D Total amount not available at this time.

E The original bond allocation of $4,960 million augmented by $5,831,911 from Prior Bonds at the 10/6/2010 SAB meeting; $211,696,295 from Prop. 55 Critically Overcrowded School at the 12/15/2010 SAB meeting.

F It includes the transfer of Critically Overcrowded School Facilities Program Funds to New Construction ($268.8 million from Prop. 55 approved at the 1/25/2006 SAB meeting, $283.2 million approved at the 9/23/2009 SAB meeting and $225 million approved at the 8/4/2010 SAB meeting, $700 million approved at the 3/25/2009 SAB meeting and $68.1 million from Prop. 47 approved at the 9/23/2009 SAB meeting).

G Original bond allocation of $50 million augmented by $15,547,233 from the State School Building Aid Fund at the 2/28/2007 SAB meeting and by $1,232,224 from Prior Bonds at the 10/6/2010 SAB meeting.

H Funds available and accumulated unfunded approvals have been reduced to reflect the Priorities of Funding approved at the 12/15/10 SAB.

SCHOOL FACILITY PROGRAM

Available Funds (in Millions) As of January 26, 2011

(Rev. 1)

Program	Original Bond Allocation	Funds Available as of December 15, 2010	Estimated Approvals for January 26, 2011 [E]	Ending Balance as of January 26, 2011 (excludes Unfunded Approvals)	Accumulated Unfunded Approvals as of December 15, 2010 [E]	Estimated Unfunded Approvals for January 26, 2011	Ending Balance as of January 26, 2011 (includes Unfunded Approvals)
Prop. 1A - $6.7 Billion - November 1998							
New Construction	$2,900.0	$5.4 [B]		$5.4	-$0.8		$4.6 [B]
Modernization	2,100.0	1.8 [B]		1.8			1.8 [B]
Hardship	1,000.0	16.5 [B]		16.5			16.5 [B]
Class Size Reduction	700.0						
SUBTOTAL	**$6,700.0**	**$23.7**	**$0.0**	**$23.7** [A]	**-$0.8**	**$0.0**	**$22.9**
TOTAL FROM PAGE 1	**$28,773.0**	**$3,472.0**	**$53.1**	**$3,525.1**	**-$1,261.9**	**-$184.6**	**$2,078.6**
GRAND TOTAL	**$35,473.0**	**$3,495.7**	**$53.1**	**$3,548.8**	**-$1,262.7**	**-$184.6**	**$2,101.5**

NEEDS ASSESSMENT/EMERGENCY REPAIR PROGRAM

Program	Appropriation	Funds Available as of December 15, 2010	Estimated Approvals for January 26, 2011	Ending Balance as of January 26, 2011 (excludes Unfunded Approvals)	Accumulated Unfunded Approvals as of December 15, 2010	Estimated Unfunded Approvals for January 26, 2011	Cash Needed
SB 6, Chapter 899, Statutes of 2004							
Needs Assessment Program (SFNAGP)	$2.5	$0.0					$0.0
Emergency Repair Program (ERP)	338.0 [C]	5.4 [B]		$5.4	-$177.3	-$51.1	-$223.0 [B]
TOTAL	**$340.5**	**$5.4**	**$0.0**	**$5.4** [A]	**-$177.3**	**-$51.1**	**-$223.0**

LEASE PURCHASE PROGRAM APPORTIONMENTS

Program	Funds Available as of December 15, 2010	Estimated Unfunded Approvals for January 26, 2011	Estimated Approvals for January 26, 2011	Adjustment from Previous SAB	Ending Balance as of January 26, 2011
Lease Purchase Program					
Prior Bonds	$36.2 [D]				$36.2 [B]
TOTAL	**$36.2**	**$0.0**	**$0.0**	**$0.0**	**$36.2**

[A] Balance of bonding authority excludes unfunded approvals.

[B] Total amount not available at this time.

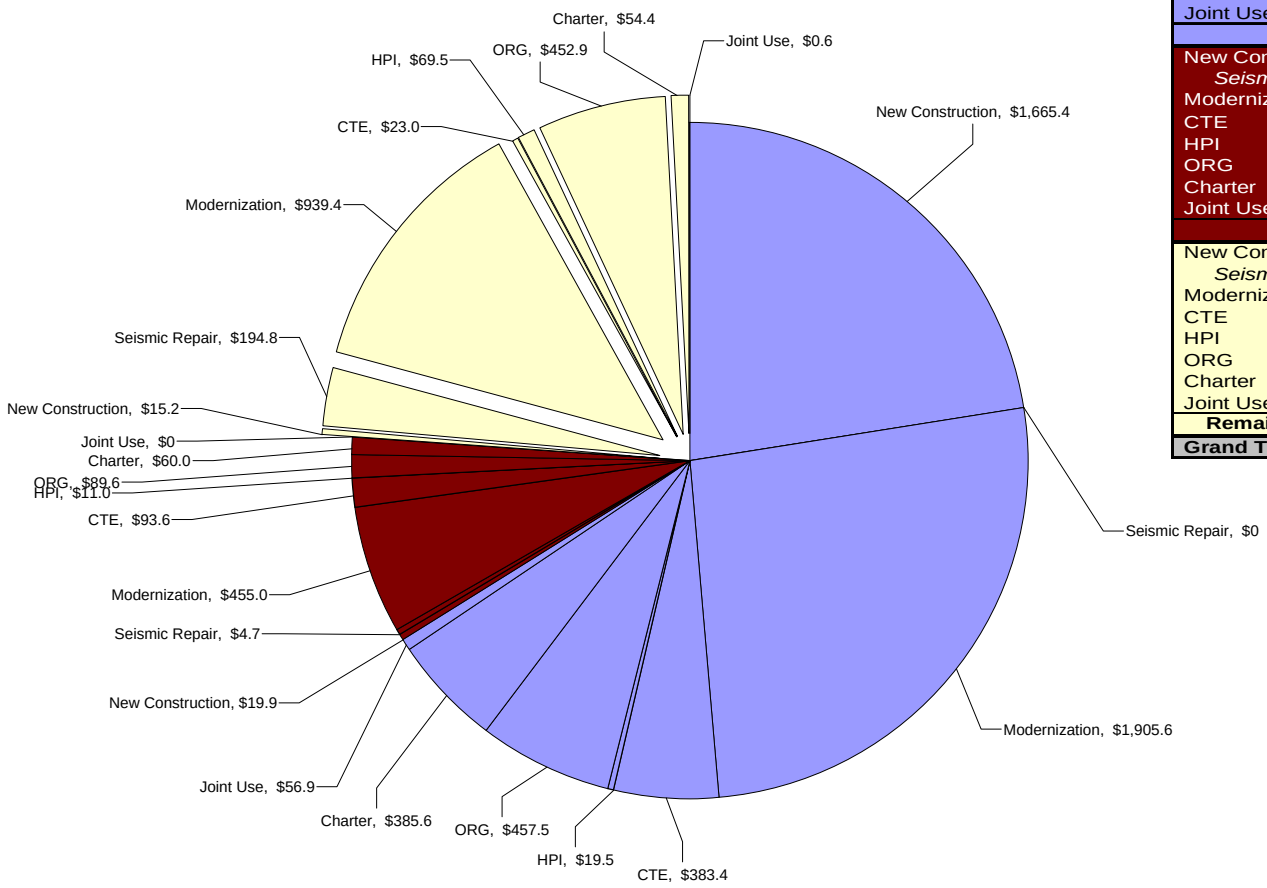
[C] Per Assembly Bill X3 4, Chapter 2, Statutes of 2008, the Emergency Repair Program received $100 million from Proposition 98 Reversion Account. Per 2008-2009 Budget Act, (per Assembly Bill 178, Chapter 278, Statutes of 2008) authorized $101 million. January 2009, $101 million from Proposition 98 Reversion Account was reversed due to lack of funds available. March 2009, received $50 million, part of 101 million from Proposition 98 Reversion Account.

[D] Approved at the 10/6/2010 SAB meeting, a transfer of $7,064,135 to Prop. 55 New Construction and Joint Use as indicated on page 1.

[E] Funds available and accumulated unfunded approvals have been reduced to reflect the Priorities of Funding approved at the 12/15/10 SAB.

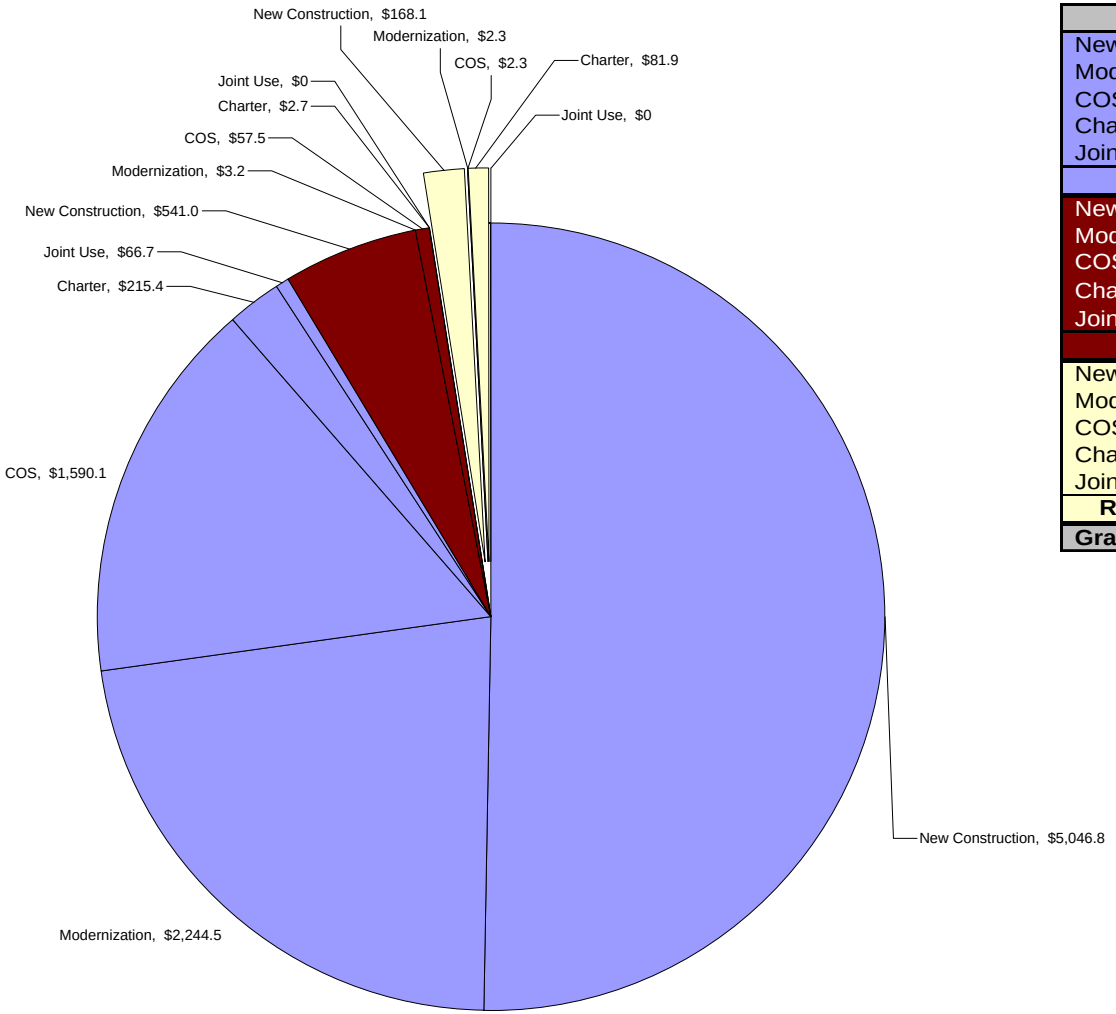
(Rev. 1)

Proposition 1D
Bond Authority - $7.358 billion
(in millions)



Proposition 1D Totals		
New Construction	$	1,665.4
Seismic Repair	*$*	-
Modernization	$	1,905.6
CTE	$	383.4
HPI	$	19.5
ORG	$	457.5
Charter	$	385.6
Joint Use	$	56.9
Apportioned	**$**	**4,873.9**
New Construction	$	19.9
Seismic Repair	*$*	*4.7*
Modernization	$	455.0
CTE	$	93.6
HPI	$	11.0
ORG	$	89.6
Charter	$	60.0
Joint Use	$	-
Unfunded Approvals	**$**	**733.8**
New Construction	$	15.2
Seismic Repair	*$*	*194.8*
Modernization	$	939.4
CTE	$	23.0
HPI	$	69.5
ORG	$	452.9
Charter	$	54.4
Joint Use	$	0.6
Remaining Bond Authority	**$**	**1,749.8**
Grand Total	**$**	**7,358**

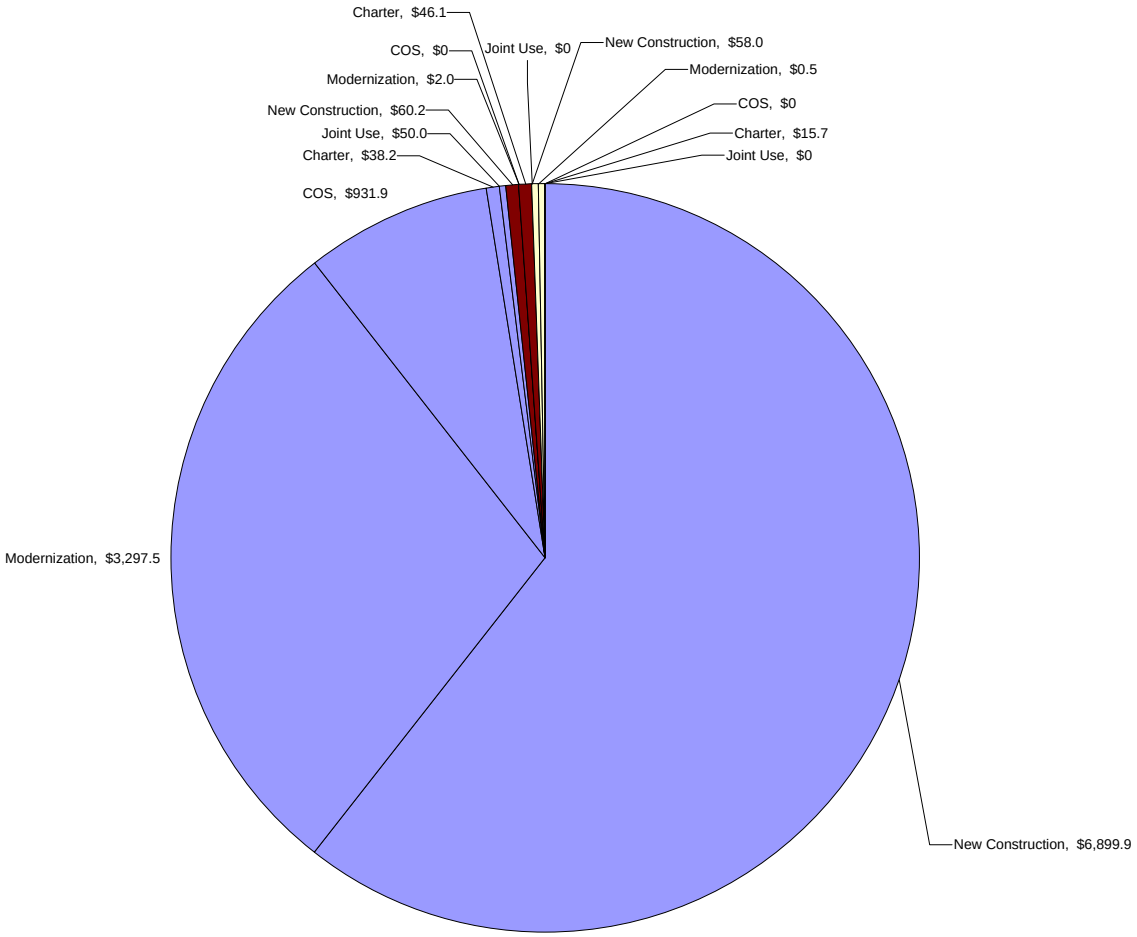
Proposition 55
Bond Authority - $10.023 billion
(in millions)



Proposition 55 Totals		
New Construction	$	5,046.8
Modernization	$	2,244.5
COS	$	1,590.1
Charter	$	215.4
Joint Use	$	66.7
Apportioned	**$**	**9,163.6**
New Construction	$	541.0
Modernization	$	3.2
COS	$	57.5
Charter	$	2.7
Joint Use	$	-
Unfunded Approvals	**$**	**604.4**
New Construction	$	168.1
Modernization	$	2.3
COS	$	2.3
Charter	$	81.9
Joint Use	$	-
Remaining Bond Authority	**$**	**254.6**
Grand Total	**$**	**10,023**

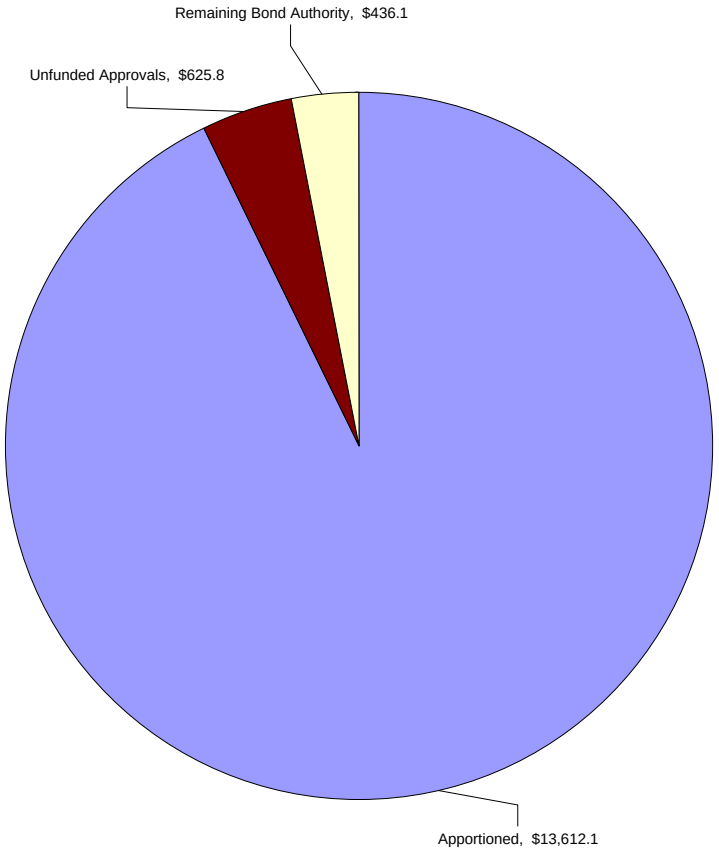
(Rev. 1)

Proposition 47
Bond Authority - $11.400 billion
(in millions)



Proposition 47 Totals		
New Construction	$	6,899.9
Modernization	$	3,297.5
COS	$	931.9
Charter	$	38.2
Joint Use	$	50.0
Apportioned	**$**	**11,217.5**
New Construction	$	60.2
Modernization	$	2.0
COS	$	-
Charter	$	46.1
Joint Use	$	-
Unfunded Approvals	**$**	**108.3**
New Construction	$	58.0
Modernization	$	0.5
COS	$	-
Charter	$	15.7
Joint Use	$	-
Remaining Bond Authority	**$**	**74.2**
Grand Total	**$**	**11,400**

Propositions 1D, 55 & 47
New Construction Bond Authority - $14.674 billion*
(in millions)



New Construction Totals		
Prop 1D	$	1,665.4
Seismic Repair	*$*	-
Prop 55	$	5,046.8
Prop 47	$	6,899.9
Apportioned	**$**	**13,612.1**
Prop 1D	$	19.9
Seismic Repair	*$*	*4.7*
Prop 55	$	541.0
Prop 47	$	60.2
Unfunded Approvals	**$**	**625.8**
Prop 1D	$	15.2
Seismic Repair	*$*	*194.8*
Prop 55**	$	168.1
Prop 47	$	58.0
Remaining Bond Authority	**$**	**436.1**
Grand Total	**$**	**14,674.0**

*Includes Energy Efficiency, Small High Schools, Seismic Repair, and the transfer of Critically Overcrowded School Facilities Program Funds to New Construction ($700 million and $68.1 million from Prop. 47; $318.3 million, $225 million, and $211.7 million from Prop. 55)

** Includes $35.1 million transferred from Critically Overcrowded School Facilities Program Funds to New Construction on September 23, 2010 and $5.8 million from the Lease Purchase Program on October 6, 2010.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 26, 2011

POLICY DISCUSSION ON THE CONSTRUCTION COST INDEX

PURPOSE OF REPORT

To present a report regarding the options of the various Class B Construction Cost Indices for the annual adjustment to the School Facility Program (SFP) grant apportionments.

DESCRIPTION

Chapter 407, Statutes of 1998 (Senate Bill 50) requires the State Allocation Board (Board) to use the annual percentage change in a Class B index to adjust the pupil grant amounts provided for modernization and new construction projects. In accordance with statute and SFP Regulation, Staff presents the available Class B indices and the associated adjustments to the per-pupil grant each year in January. Since 1998, the Board has adopted Marshall & Swift's (M&S)Ten Western States or Eight California Cities indices.

At the March 2010 Board meeting, discussions took place on the statewide Class B Construction Cost Index (CCI). The Board indicated that it was necessary to review the various index options to find the most accurate index that reflects the changes in California school construction costs. The Board directed Staff to have this discussion at a future Implementation Committee meeting.

AUTHORITY

EC (Education Code) Section 17041.8(b)(2) states, "The monetary rates set forth in this paragraph shall be increased annually for inflation for the prior calendar year on the basis of the cost index for class B construction as determined in the January meeting of the board."

EC Section 17072.10(b) states, "The Board shall annually adjust the per unhoused- pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the Board."

EC Section 17074.10(b) states, "The Board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board."

SFP Regulation Section 1859.2 defines "Class B Construction Cost Index" as a construction factor index for structures made of reinforced concrete or steel frames, concrete floors, and roofs, and accepted and used by the Board.

SFP Regulations Section 1859.71 states, "The new construction per-unhoused-pupil grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January."

SFP Regulation Section 1859.78 states, "The modernization per-unhoused-pupil grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January."

(Continued on Page Two)

BACKGROUND

The annual adjustment to the SFP grants was discussed at the June, August, and September 2010 Implementation committee meetings. Staff presented a detailed overview of five Construction Cost Indices published by Marshall & Swift, Lee Saylor Index (LSI), and Engineering News Review (ENR). While each index is comprised of four standard categories, i.e. city or state grouping, materials used, labor used, and wage rates, the components of each category vary. A list of these components is presented in Attachment A.

To provide a comprehensive overview, Staff is providing historical data from 1998 through 2010, the time period when the Board was required to use the annual percentage change in a Class B index to adjust the per-pupil grant amounts. The Committee was provided graphs to demonstrate the comparison of the annual CCI change for each of the five indices as shown in Attachment B1 (from 1999 to 2004) and B2 (from 2005 to 2011). The percentage represents the average increase or decrease in costs that occurred in the previous year. The cumulative change in index value is shown in Attachment C. These figures represent the change in CCI as related to all previous years, with 1998 considered as a base year corresponding to the inception of the SFP.

After reviewing Staff's report the main issues discussed by the Committee members and stakeholders were the definition of a statewide index, a possible customized index, incorporation of prevailing wage rates, and whether the CCI adjustment should be made annually or more often.

The statewide cost index chosen to adjust the CCI should reflect California school construction where SFP funding will occur. The majority of Committee members and stakeholders felt that M&S San Francisco & Los Angeles, Ten Western States, and ENR did not accurately reflect a statewide cost index. The Committee considered a customized index that would more accurately reflect California school construction. However, it was determined that the development of a customized index would not be feasible at this time. The majority agreed that the two indices most closely aligned with California construction costs are M&S Eight California Cities and LSI.

Some Committee members and stakeholders favored the LSI since Staff currently uses the Saylor Publications Current Construction Costs book. The rationale was that the publications would align with one another since the data is collected by the same company. However, the two publications produced are separate from one another, because they measure different components for construction. The LSI CCI is based on twenty U.S. Cities and the Saylor Publications Current Construction Costs book that Staff uses is based on costs in San Francisco. These costs are solely used to support additional grants for specific site development costs, such as grading, and typically represent the highest rates in California. The two publications would not necessarily align with one another.

The incorporation of prevailing wage rates within these indices was imperative to the group, since it is required by law in California. The Department of Industrial Relations (DIR) establishes California prevailing wage rates for each trade and occupation based on surveys in a given area for the predominant wages. According to the DIR, the majority of predominant wages are the union wages and a majority of local union wages make up the prevailing wage in most city and states. Both M&S Eight California Cities and LSI track the local union wages by the study cities used within their index. Therefore, the study cities are vital to ensure prevailing wage rates are relevant to California.

(Continued on Page Three)

BACKGROUND (Cont.)

The Committee also considered the interpretation of EC Section 17072.10(b), that "The Board shall annually adjust the per un-housed pupil apportionment…." Department of General Services legal opined that the board can only make this adjustment annually, to mean only once in a 12 month or 365 day period. Some Committee members proposed to make the CCI adjustment more than once a year; however, this would require legislation to change. Additionally, some Committee members proposed to establish commitment to one index for the next two to three years, which would require a Board action.

STAFF STATEMENTS

As a result of Committee discussions and Staff research, Staff finds that the M&S Eight California Cities Index most accurately reflects the conditions under which districts will be building their schools under the SFP. The M&S Eight California Cities Index is the only Class B index that exclusively uses California cities to capture material and prevailing wage costs in California. Since LSI uses up to 20 U.S. cities nationwide, only two of which (San Francisco and Los Angeles) are in California. Staff would not consider the LSI because it does not satisfy the Board's intention to adopt the index that is most closely aligned with California school construction costs. The Board could select one of these indices for a period of years to provide consistency in the annual adjustment. A legislative change would be needed to make the selection permanent.

RECOMMENDATIONS

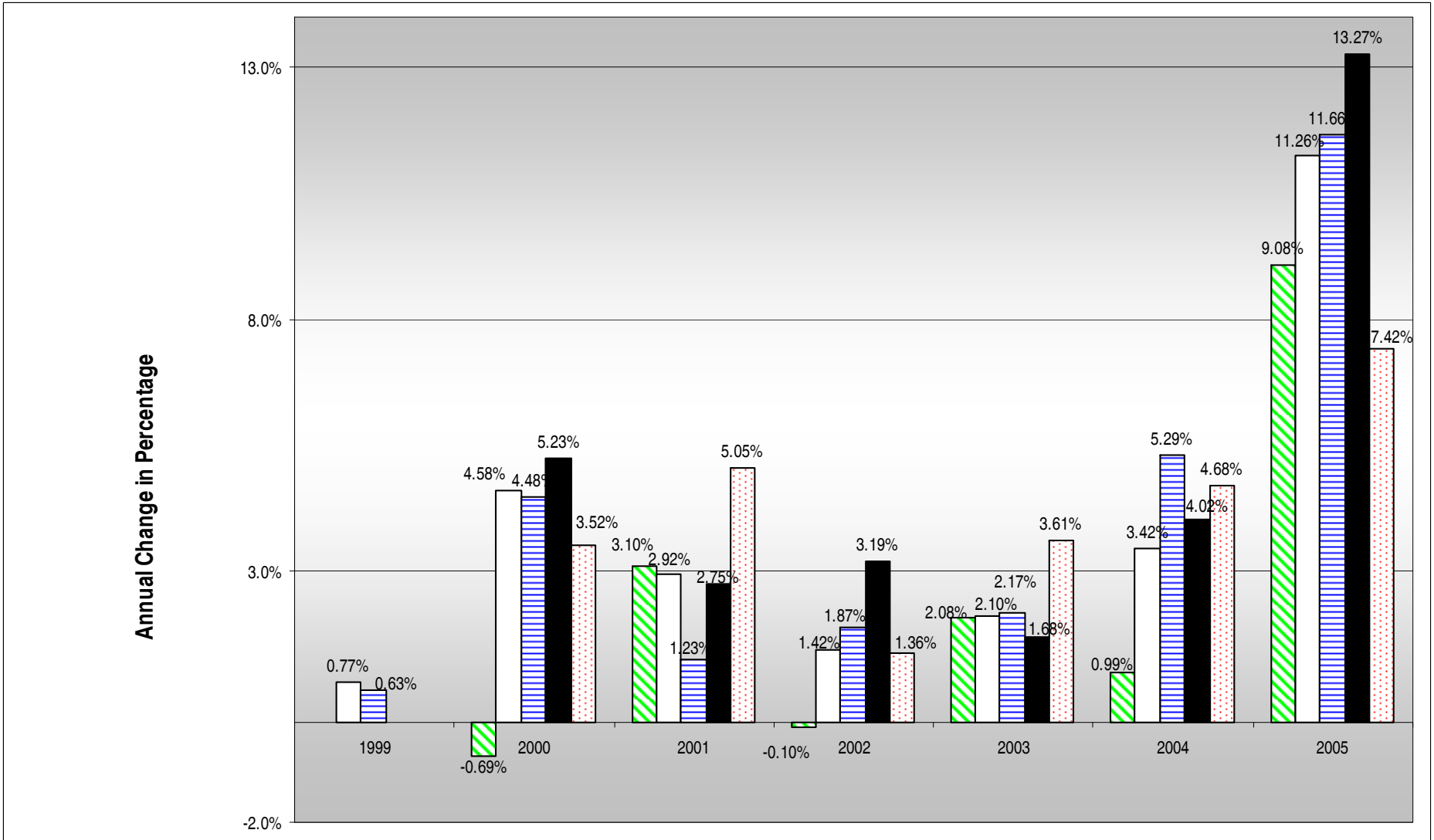
Acknowledge this report.

This Report was acknowledged by the State Allocation Board on January 26, 2011.

ATTACHMENT A
CONSTRUCTION COST INDEX
State Allocation Board Meeting, January 26, 2011
INDICES COMPARISON

Indices	City/State Grouping	Materials Used	Labor Used	Wage Rates
Marshall and Swift 8 California Cities	Eureka, Sacramento, San Francisco, Fresno, Bakersfield, Los Angeles, Riverside, and San Diego.	Average based on 12 kinds of materials from a minimum of 2 to 5 suppliers in the 8 California cities. Ready-mix Concrete, Concrete Block, Brick, Drywall, Structural Steel, Steel Decking, Felt Paper, Re-bar, Galvanized Pipe, Copper Wire, Plywood, and Lumber.	Average of labor based upon 6 trades tracked in the 8 California cities. Common labor, electricians, bricklayers, carpenters, structural iron workers and plumbers.	Index uses prevailing wage within the 8 California cities confirmed with the Department of Industrial Relations – Prevailing Wage Unit.
Lee Saylor Index	20 U.S. Cities; Atlanta, Chicago, Denver, Minneapolis, Pittsburg, Baltimore, Cincinnati, Detroit, New Orleans, San Francisco, Birmingham, Cleveland, Kansas City, New York, Seattle, Boston, Dallas, Los Angeles, Philadelphia, and St. Louis.	Average based on 23 key construction materials in 20 cities, throughout the U.S. The prices are derived from information taken from the *Engineering News Record (ENR)* on a monthly basis. Aluminum, Felt Paper, Concrete Block, Brick, Cement, Portland Ready-mix Concrete, Copper tubing, Glass, GWB, Insulation-Mineral Wool Insulation-Rigid Fiberboard, Lath-metal, Lumber, Masons Lime Paving-Asphalt, Pipe-PVC, Pipe Reinforced Concrete 24", Plywood, Steel Sheets-Stainless, Steel-Reinforcing, Steel- Structural, Tar Pitch, and Titanium Pigment.	Average of labor based on quotes for 9 union crafts in 16 cities across the U.S. Carpenters, bricklayers, ironworkers, laborers, painters, engineers, plasterers, plumbers, electricians and teamsters.	All contractors do not pay the same rates. Therefore, by using unions as the basis for the rates, the percentage increases are stabilized and reflect, on the whole, wage trends. These increases generally reflect the same percentage increases in private and prevailing wage work.
Marshall and Swift San Francisco and Los Angeles	San Francisco and Los Angeles	Average based on 12 kinds of materials from a minimum of 2 to 5 suppliers in San Francisco and Los Angeles. Ready-mix Concrete, Concrete Block, Brick, Drywall, Structural Steel, Steel Decking, Felt Paper, Re-bar, Galvanized Pipe, Copper Wire, Plywood, and Lumber.	Average of labor based upon 6 trades tracked in San Francisco and Los Angeles. Common labor, electricians, bricklayers, carpenters, structural iron workers and plumbers.	Index uses prevailing wage within San Francisco and Los Angeles.
Marshall and Swift 10 Western States	California, Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.	Average based on 12 kinds of materials from a minimum of 2 to 5 suppliers in the 11 Western States. Ready-mix Concrete, Concrete Block, Brick, Drywall, Structural Steel, Steel Decking, Felt Paper, Re-bar, Galvanized Pipe, Copper Wire, Plywood, and Lumber.	Average of labor based upon 6 trades tracked in the 11 Western states. Common labor, electricians, bricklayers, carpenters, structural iron workers and plumber.	Index uses prevailing wage within the 11 Western States.
Engineering News Review	20 U.S. Cities; Atlanta, Chicago, Denver, Minneapolis, Pittsburg, Baltimore, Cincinnati, Detroit, New Orleans, San Francisco, Birmingham, Cleveland, Kansas City, New York, Seattle, Boston, Dallas, Los Angeles, Philadelphia, and St. Louis.	Average based on 3 types of materials; structural steel, Portland cement, 2x4 lumber using spot pricing from a single source in each city.	Average of 20 city wage fringe labor rates are tracked for bricklayers, carpenters, and structural iron workers.	Unknown

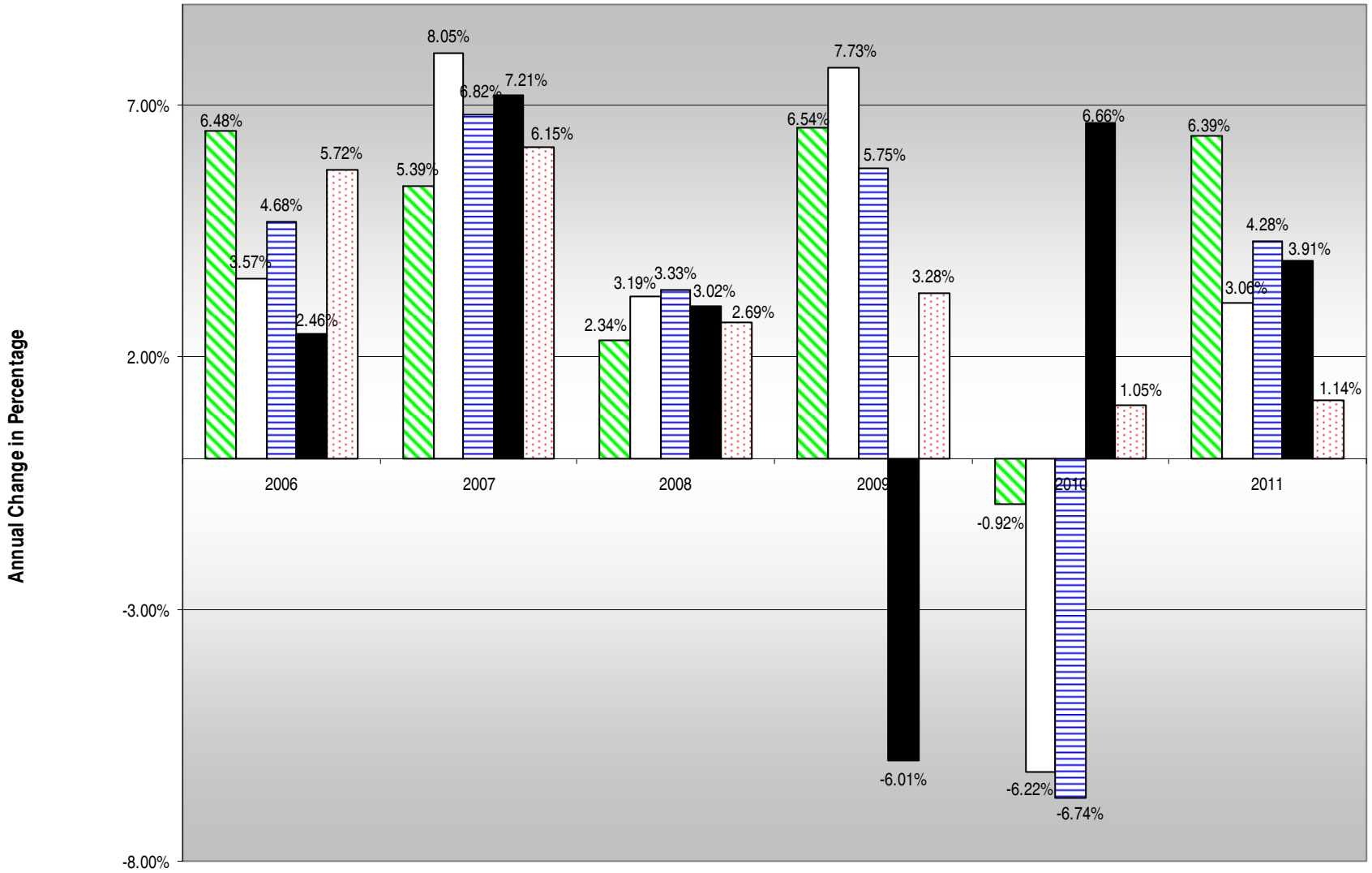
ATTACHMENT B1
CONSTRUCTION COST INDEX
State Allocation Board Meeting, January 26, 2011
Jan. 1999 to Jan. 2004



	Jan-99	Jan-00	Jan-01	Jan-02	Jan-03	Jan-04	Jan-05
ENR BCI %	0.0%	-0.69%	3.10%	-0.10%	2.08%	0.99%	9.08%
M&S CCI % 10 W. STATES CLASS B	0.77%	4.58%	2.92%	1.42%	2.10%	3.42%	11.26%
M&S CCI % 8 CAL. CITIES CLASS B	0.63%	4.48%	1.23%	1.87%	2.17%	5.29%	11.66%
M&S CCI % S.F. & L.A. CLASS B	0.0%	5.23%	2.75%	3.19%	1.68%	4.02%	13.27%
LSI CCI %	0.0%	3.52%	5.05%	1.36%	3.61%	4.68%	7.42%

ATTACHMENT B2
CONSTRUCTION COST INDEX
State Allocation Board Meeting, January 26, 2011
Jan. 2005 to Jan. 2011

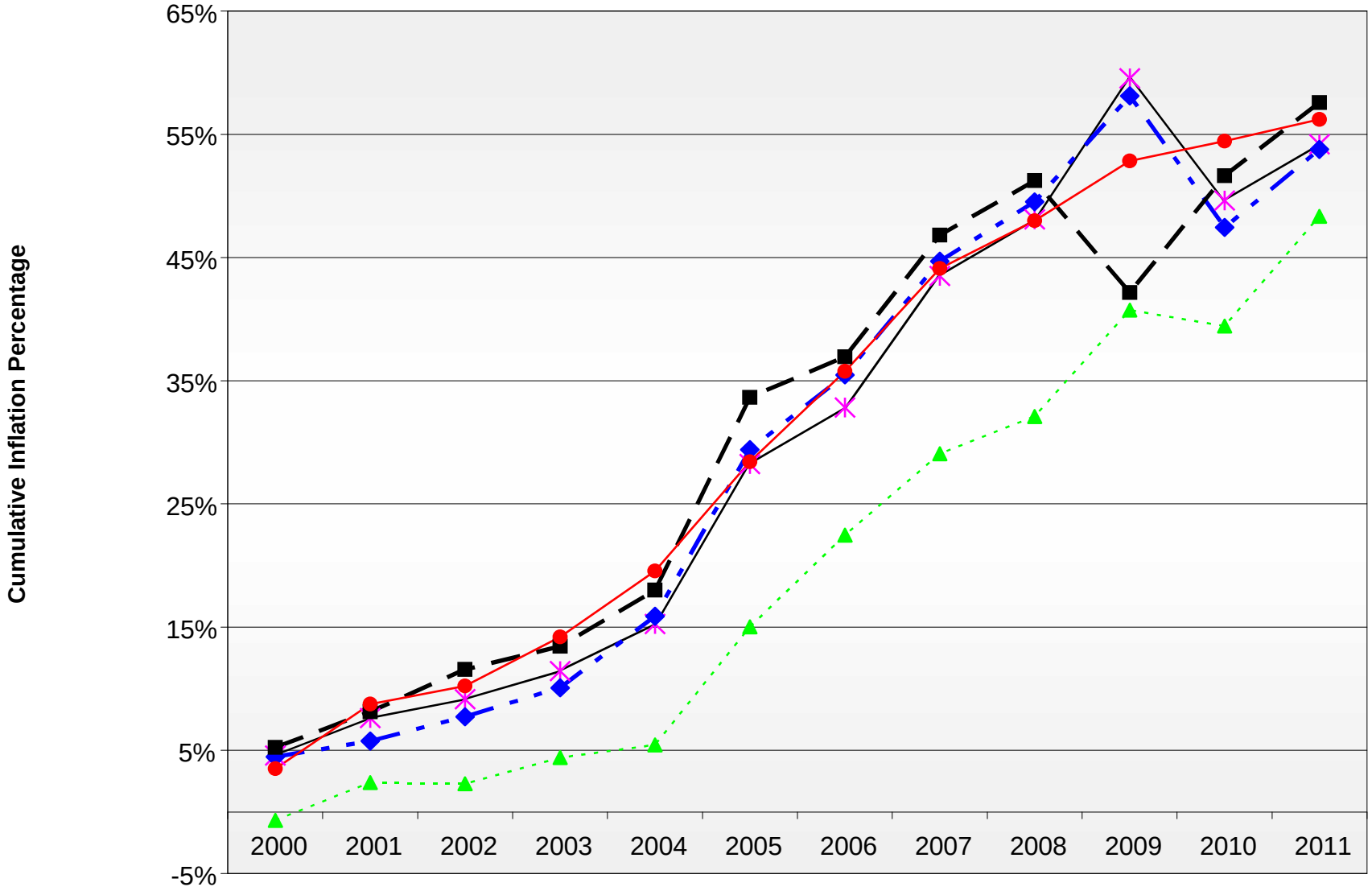
(Rev. 1)



	Jan-06	Jan-07	Jan-08	Jan-09	Jan-10	Jan-11
ENR BCI %	6.48%	5.39%	2.34%	6.54%	-0.92%	6.39%
M&S CCI % 10 W. STATES CLASS B	3.57%	8.05%	3.19%	7.73%	-6.22%	3.06%
M&S CCI % 8 CAL. CITIES CLASS B	4.68%	6.82%	3.33%	5.75%	-6.74%	4.28%
M&S CCI % S.F. & L.A. CLASS B	2.46%	7.21%	3.02%	-6.01%	6.66%	3.91%
LSI CCI %	5.72%	6.15%	795 2.69%	3.28%	1.05%	1.14%

ATTACHMENT C
CONSTRUCTION COST INDEX
State Allocation Board Meeting, January 26, 2011

(Rev. 1)



	Jan-00	Jan-01	Jan-02	Jan-03	Jan-04	Jan-05	Jan-06	Jan-07	Jan-08	Jan-09	Jan-10	Jan-11
ENR BCI %	-0.7%	2.4%	2.3%	4.4%	5.4%	15.0%	22.5%	29.1%	32.1%	40.7%	39.4%	48.3%
M&S CCI % 10 W. STATES CLASS B	4.6%	7.6%	9.2%	11.5%	15.3%	28.2%	32.8%	43.5%	48.1%	59.5%	49.6%	54.2%
M&S CCI % 8 CAL. CITIES CLASS B	4.5%	5.8%	7.7%	10.1%	15.9%	29.4%	35.5%	44.7%	49.5%	58.1%	47.5%	53.8%
M&S CCI % S.F. & L.A. CLASS B	5.2%	8.1%	11.6%	13.4%	18.0%	33.7%	36.9%	46.8%	51.3%	42.2%	51.6%	
LSI CCI %	3.5%	8.7%	10.2%	14.2%	19.6%	28.4%	35.8%	44.1%	48.0%	52.8%	54.5%	56.2%

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 26, 2011

JOINT-USE FUND RELEASE STATUS REPORT

PURPOSE OF REPORT

To update the State Allocation Board (Board) on the status of fund release requests for recent School Facility Program (SFP) Joint-Use apportionments.

DESCRIPTION

Per Board direction, this item provides the fund release status of five Joint-Use projects that were apportioned at the October 6, 2010 Board meeting, under the traditional 18 month time limit to request a fund release.

AUTHORITY

Section 1859.90 states, "…a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, part of a qualifying SFP Modernization project, Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility...."

BACKGROUND

At the August 25, 2010 Board meeting, an item was presented regarding cash proceeds available for apportionment. Of the $68.51 million available, the Board directed staff to allocate $5 million dollars for the Joint-Use Program.

At the October 6, 2010 Board meeting, the Board approved apportionments for five Joint-Use projects totaling $6,799,848. The Board requested that Staff provide quarterly updates on the status of the fund release liquidation for these projects.

STAFF ANALYSIS

The following projects received apportionments at the October 6, 2010 Board meeting.

District	School	Application Number	State Share	Fund Release Requested
Lindsay Unified	Lindsay Senior High	52/71993-00-001	$2,000,000	Yes
Lindsay Unified	Lindsay Senior High	52/71993-00-002	$1,315,186	Yes
Sacramento City Unified	School Of Engineering And Sciences	52/67439-00-001	$572,374	Yes
Merced Union High	Bellevue Road Area High School	52/65789-00-001	$2,000,000	No
Buckeye Elementary School	Valley View Elementary	52/61838-00-001	$912,288	No

To date, Lindsay Unified and Sacramento City Unified have submitted fund release requests for three of the projects; 52/71993-00-001, 52/71993-00-002 and 52/67439-00-001.

Staff has been in contact with the remaining districts and their two projects are in various stages of the bidding process. The districts anticipate submitting fund release requests by late February to early March.

RECOMMENDATION

Acknowledge this report.

The Report was acknowledged by the State Allocation Board on January 26, 2011.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 26, 2011

APPROVED SCHOOL FACILITY PROGRAM CONSENT AND APPEAL ITEMS REPORT

PURPOSE OF REPORT

To present an annual report to the State Allocation Board (Board) comparing the number of School Facility Program (SFP) funding projects approved as consent items and project appeals that resulted in a fiscal impact.

DESCRIPTION

An annual report to the Board comparing the number of funded consent and funded appeal items.

BACKGROUND

On May 27, 2009, the Board requested that Staff provide/present a report to the Board to compare the number of consent and appeal items. This is the second annual report. The first annual report was heard by the Board at the January 2010 meeting.

Since the inception of the SFP in 1998, voters have authorized $37.4 billion in bond funds and the Board has apportioned and/or provided unfunded approvals for more than $32 billion to approximately 11,000 projects. In calendar year 2010, the Board made the following approvals.

School Facility Program Category	Total Number of Consent Projects	Approximate Funded/Unfunded Approvals for Consent (in Millions)	Total Number of Appeals*	Approximate Funded Approvals for Appeals (in Millions)
New Construction	320	$1,281.6	1	$2.6
Modernization	541	1,040.3	1	.3
Career Technical Education	77	93.7		
Overcrowding Relief Grant	40	202.6		
Critically Overcrowded Schools	15	374.2		
Charter Schools	15	88.0		
Joint-Use	6	5.5		
Grand Total:	1,014	$3,085.9	2	$2.9

* Resulted in a fiscal impact.

Of these 1,014 projects, from calendar year 2010, two projects (0.2 percent) were approved as appeals, which represent a total of $2.9 million (0.1 percent).

RECOMMENDATION

Acknowledge this report.

The Report was acknowledged by the State Allocation Board on January 26, 2011.

Tentative Workload
February 23, 2011

APPEALS

Bangor ESD/Butte
Morongo USD/San Bernardino

ACTION ITEMS

Cash Management System
CSFP Fund Release Timeline
Labor Compliance Plan

REPORTS, DISCUSSION and INFORMATION ITEMS

Seismic Update
Status of Fund Releases
Status of Funds

Tentative Workload
March 23, 2011

APPEALS

ACTION ITEMS

CSFP 2009 Close-Out

REPORTS, DISCUSSION and INFORMATION ITEMS

Status of Fund Releases

Status of Funds

Site Sale Proceeds Interim Report to the Legislature

Tentative Workload
April 27, 2011

APPEALS

ACTION ITEMS

REPORTS, DISCUSSION and INFORMATION ITEMS

Status of Fund Releases

Status of Funds

APPEALS

Appeal Received Date	District	Estimated SAB Date *
5/29/09	Los Angeles Unified School District/Los Angeles	3/23/11
10/4/2010	Los Angeles Unified School District/Los Angeles	3/23/11
11/3/2010	Morongo USD/San Bernardino	2/23/11
11/8/2010	Bangor ESD/Butte	2/23/11
11/17/2010	Scotts Valley USD/Santa Cruz	2/23/11

*Please note: Estimated SAB Date is not a guaranteed meeting date.

STATE ALLOCATION BOARD MEETING DATES

The State Allocation Board (SAB) meeting dates for the 2011 calendar year are as follows:

Board Date	Type of Meeting
February 23, 2011	Monthly (Consent/Special)
March 23, 2011	Monthly (Consent/Special)
April 27, 2011	Monthly (Consent/Special)
May 25, 2011	Monthly (Consent/Special)
June 22, 2011	Monthly (Consent/Special)
July 27, 2011	Monthly (Consent/Special)
August 24, 2011	Monthly (Consent/Special)
September 28, 2011	Monthly (Consent/Special)
October 26, 2011	Monthly (Consent/Special)
December 2011 *	Monthly (Consent/Special)

The SAB meets in different rooms within the State Capitol at 4:00 p.m. when the State Legislature is in session and at 2:00 p.m. when the State Legislature is out on recess. Due to scheduling changes within the Legislature, some of the SAB meetings may be cancelled or changed with short notice.

* Date to be determined

INFORMATION ITEM

SCHOOL FACILITY PROGRAM
NEW CONSTRUCTION AND MODERNIZATION UNFUNDED LIST
(as of December 15, 2010)

The New Construction and Modernization projects on this list have received an "unfunded" approval by the State Allocation Board (SAB). Note that an "unfunded" approval does not guarantee a future apportionment by the SAB.

Published monthly in the SAB Agenda.

This report is also on the OPSC Web site at:
www.dgs.ca.gov/opsc

SCHOOL FACILITY PROGRAM
UNFUNDED APPROVALS
as of December 15, 2010

County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
SAN BERNARDINO	SAN BERNARDINO COUNTY OFFI	50/10363-04-032	New Construction	G	11/17/2008	8/26/2009	2,177,509.00	2,177,509.00	4,355,018.00	4,355,018.00
SAN BERNARDINO	SAN BERNARDINO COUNTY OFFI	50/10363-03-060	New Construction	G	11/25/2008	8/26/2009	1,404,885.50	1,404,885.50	2,809,771.00	7,164,789.00
SAN BERNARDINO	SAN BERNARDINO COUNTY OFFI	50/10363-02-056	New Construction	D	12/17/2008	8/26/2009	189,533.00	189,533.00	379,066.00	7,543,855.00
SAN JOAQUIN	SAN JOAQUIN COUNTY OFFICE O	50/10397-00-024	New Construction	D	1/23/2009	8/26/2009	94,766.50	94,766.50	189,533.00	7,733,388.00
LOS ANGELES	MONTEBELLO UNIFIED	56/64808-00-005	Overcrowding Relief Grant	G	1/28/2009	8/26/2009	0.00	4,865,871.00	4,865,871.00	12,599,259.00
LOS ANGELES	MONTEBELLO UNIFIED	56/64808-00-006	Overcrowding Relief Grant	G	1/28/2009	8/26/2009	0.00	4,427,394.00	4,427,394.00	17,026,653.00
LOS ANGELES	LOS ANGELES UNIFIED	54/64733-00-054	Charter	P	8/18/2009	8/26/2009*	0.00	15,536,861.00	31,073,722.00	48,100,375.00
MONTEREY	ALISAL UNION ELEMENTARY	50/65961-00-005	New Construction	G	2/13/2009	9/23/2009	8,859,069.00	8,859,069.00	17,718,138.00	65,818,513.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-024	Modernization	G	2/13/2009	9/23/2009	0.00	2,153,265.00	2,153,265.00	67,971,778.00
MONTEREY	ALISAL UNION ELEMENTARY	50/65961-00-009	New Construction	J	2/17/2009	9/23/2009	325,000.00	325,000.00	650,000.00	68,621,778.00
MADERA	YOSEMITE UNIFIED	57/76414-00-007	Modernization	G	2/18/2009	9/23/2009	0.00	638,029.00	638,029.00	69,259,807.00
MONTEREY	ALISAL UNION ELEMENTARY	50/65961-00-007	New Construction	J	5/4/2009	9/23/2009	1,503,700.00	1,503,700.00	3,007,400.00	72,267,207.00
MONTEREY	ALISAL UNION ELEMENTARY	50/65961-00-006	New Construction	J	8/31/2009	9/23/2009	2,335,700.00	2,335,700.00	4,671,400.00	76,938,607.00
MONTEREY	SAN LUCAS UNION ELEMENTARY	57/66183-00-001	Modernization	G	3/9/2009	11/4/2009	268,680.00	555,558.00	824,238.00	77,762,845.00
SHASTA	GRANT ELEMENTARY	50/70003-00-002	New Construction	G	4/23/2009	11/4/2009	560,681.00	560,681.00	1,121,362.00	78,884,207.00
SANTA BARBARA	GUADALUPE UNION ELEMENTAR	50/69203-00-001	New Construction	J	5/4/2009	11/4/2009	1,545,425.00	1,552,050.00	3,097,475.00	81,981,682.00
SHASTA	SHASTA COUNTY OFFICE OF EDU	50/10454-00-007	New Construction	G	5/5/2009	11/4/2009	2,654,557.50	2,654,557.50	5,309,115.00	87,290,797.00
LOS ANGELES	SAUGUS UNION ELEMENTARY	50/64998-00-018	New Construction	G	5/11/2009	11/4/2009	0.00	4,261,823.00	4,261,823.00	91,552,620.00
TULARE	FARMERSVILLE UNIFIED	50/75325-00-005	New Construction	D	7/14/2009	11/4/2009	133,274.00	374,760.00	508,034.00	92,060,654.00
LOS ANGELES	WILSONA	50/65151-00-002	New Construction	G	5/2/2005	1/27/2010	46,812.00	46,812.00	93,624.00	92,154,278.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-025	Modernization	G	4/7/2009	1/27/2010	0.00	4,610,660.00	4,610,660.00	96,764,938.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-026	Modernization	G	4/21/2009	1/27/2010	0.00	1,578,043.00	1,578,043.00	98,342,981.00
LOS ANGELES	POMONA UNIFIED	57/64907-00-020	Modernization	G	5/1/2009	1/27/2010	0.00	555,595.00	555,595.00	98,898,576.00
MERCED	MERCED COUNTY OFFICE OF ED	50/10249-00-034	New Construction	G	5/13/2009	1/27/2010	970,066.00	970,066.00	1,940,132.00	100,838,708.00
RIVERSIDE	PALM SPRINGS UNIFIED	50/67173-02-008	New Construction	G	5/14/2009	1/27/2010	0.00	12,950,842.00	12,950,842.00	113,789,550.00
TULARE	FARMERSVILLE UNIFIED	57/75325-00-004	Modernization	G	5/14/2009	1/27/2010	378,284.00	567,426.00	945,710.00	114,735,260.00
MERCED	MERCED COUNTY OFFICE OF ED	50/10249-00-035	New Construction	G	5/19/2009	1/27/2010	2,119,608.00	2,119,608.00	4,239,216.00	118,974,476.00
SANTA BARBARA	COLLEGE ELEMENTARY	57/69179-00-004	Modernization	G	6/3/2009	1/27/2010	0.00	630,408.00	630,408.00	119,604,884.00
TULARE	FARMERSVILLE UNIFIED	50/75325-00-005	New Construction	G	7/14/2009	1/27/2010	1,659,198.00	1,659,198.00	3,318,396.00	122,923,280.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-020	Modernization	G	7/15/2009	1/27/2010**	0.00	1,287,806.00	1,287,806.00	124,211,086.00
TULARE	ALPAUGH UNIFIED	50/71803-00-001	New Construction	D	7/30/2009	1/27/2010	333,536.50	333,536.50	667,073.00	124,878,159.00
STANISLAUS	ROBERTS FERRY UNION ELEMEN	50/71233-00-001	New Construction	G	7/31/2009	1/27/2010	1,316,004.00	1,389,717.00	2,705,721.00	127,583,880.00
LOS ANGELES	ALHAMBRA UNIFIED	56/75713-00-007	Overcrowding Relief Grant	G	7/31/2009	1/27/2010	0.00	1,109,289.00	1,109,289.00	128,693,169.00
TEHAMA	LOS MOLINOS UNIFIED	57/71571-00-001	Modernization	D	7/1/2009	4/28/2010	26,134.00	57,962.00	84,096.00	128,777,265.00
TEHAMA	LOS MOLINOS UNIFIED	57/71571-00-002	Modernization	D	7/1/2009	4/28/2010	43,246.00	141,293.00	184,539.00	128,961,804.00
TEHAMA	LOS MOLINOS UNIFIED	57/71571-00-003	Modernization	D	7/1/2009	4/28/2010	82,884.00	140,049.00	222,933.00	129,184,737.00
STANISLAUS	CERES UNIFIED	50/71043-00-014	New Construction	G	8/11/2009	4/28/2010	0.00	2,202,847.00	2,202,847.00	131,387,584.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-027	Modernization	G	8/3/2009	5/26/2010	0.00	835,919.00	835,919.00	132,223,503.00
STANISLAUS	TURLOCK UNIFIED	57/75739-00-011	Modernization	G	8/5/2009	5/26/2010	0.00	867,590.00	867,590.00	133,091,093.00
STANISLAUS	CERES UNIFIED	57/71043-00-010	Modernization	G	8/13/2009	5/26/2010	0.00	479,841.00	479,841.00	133,570,934.00
STANISLAUS	CERES UNIFIED	57/71043-00-011	Modernization	G	8/13/2009	5/26/2010	0.00	898,265.00	898,265.00	134,469,199.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-028	Modernization	G	8/26/2009	5/26/2010	0.00	1,708,353.00	1,708,353.00	136,177,552.00
STANISLAUS	TURLOCK UNIFIED	57/75739-00-010	Modernization	G	8/26/2009	5/26/2010	0.00	2,677,989.00	2,677,989.00	138,855,541.00
LOS ANGELES	GARVEY ELEMENTARY	57/64550-00-013	Modernization	G	8/27/2009	5/26/2010	0.00	38,387.00	38,387.00	138,893,928.00
LOS ANGELES	GARVEY ELEMENTARY	57/64550-00-015	Modernization	G	8/27/2009	5/26/2010	0.00	901,375.00	901,375.00	139,795,303.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-023	Modernization	G	9/3/2009	5/26/2010	0.00	586,313.00	586,313.00	140,381,616.00
LOS ANGELES	LOS ANGELES UNIFIED*	54/64733-00-072	Charter	P	9/25/2009	5/26/2010	0.00	4,333,780.00	4,333,780.00	144,715,396.00
LOS ANGELES	LOS ANGELES UNIFIED*	54/64733-00-074	Charter	P	9/25/2009	5/26/2010	0.00	6,319,930.00	6,319,930.00	151,035,326.00
SANTA CLARA	FRANKLIN-MCKINLEY ELEMENTA	54/69450-00-001	Charter	P	9/25/2009	5/26/2010	0.00	6,377,870.00	6,377,870.00	157,413,196.00
CALAVERAS	CALAVERAS UNIFIED	50/61564-00-004	New Construction	G	9/28/2009	5/26/2010	0.00	1,147,873.00	1,147,873.00	158,561,069.00
ALAMEDA	OAKLAND UNIFIED*	54/61259-00-001	Charter	P	9/28/2009	5/26/2010	0.00	3,131,842.00	3,131,842.00	161,692,911.00
ALAMEDA	OAKLAND UNFIED*	54/61259-09-004	Charter	P	9/28/2009	5/26/2010	0.00	766,800.00	766,800.00	162,459,711.00
ALAMEDA	OAKLAND UNFIED*	54/61259-09-005	Charter	P	9/28/2009	5/26/2010	0.00	2,556,172.00	2,556,172.00	165,015,883.00
LOS ANGELES	LOS ANGELES UNIFIED*	54/64733-00-082	Charter	P	9/28/2009	5/26/2010	0.00	13,464,960.00	13,464,960.00	178,480,843.00
LOS ANGELES	LOS ANGELES UNIFIED*	54/64733-00-083	Charter	P	9/28/2009	5/26/2010	0.00	882,788.00	882,788.00	179,363,631.00
ORANGE	SANTA ANA UNIFIED*	54/66670-00-003	Charter	P	9/28/2009	5/26/2010	0.00	17,413,956.00	17,413,956.00	196,777,587.00
SACRAMENTO	SACRAMENTO CITY UNIFIED*	54/67439-00-005	Charter	P	9/28/2009	5/26/2010	0.00	6,662,240.00	6,662,240.00	203,439,827.00
SACRAMENTO	SACRAMENTO CITY UNIFIED*	54/67439-00-006	Charter	P	9/28/2009	5/26/2010	0.00	1,878,376.00	1,878,376.00	205,318,203.00
SAN JOAQUIN	NEW JERUSALEM ELEMENTARY*	54/68627-00-001	Charter	P	9/28/2009	5/26/2010	0.00	1,506,746.00	1,506,746.00	206,824,949.00
RIVERSIDE	PALM SPRINGS UNIFIED	50/67173-02-009	New Construction	G	10/5/2009	5/26/2010	0.00	20,200,850.00	20,200,850.00	227,025,799.00
STANISLAUS	TURLOCK UNIFIED	57/75739-00-015	Modernization	G	10/13/2009	5/26/2010	0.00	2,378,818.00	2,378,818.00	229,404,617.00

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County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
ORANGE	SANTA ANA UNIFIED	57/66670-00-026	Modernization	G	10/19/2009	5/26/2010	0.00	1,954,252.00	1,954,252.00	231,358,869.00
SHASTA	PACHECO UNION ELEMENTARY	50/70094-00-001	New Construction	G	10/20/2009	5/26/2010	0.00	463,593.00	463,593.00	231,822,462.00
SHASTA	PACHECO UNION ELEMENTARY	50/70094-00-002	New Construction	G	10/20/2009	5/26/2010	0.00	931,116.00	931,116.00	232,753,578.00
STANISLAUS	CERES UNIFIED	50/71043-00-020	New Construction	G	10/21/2009	5/26/2010	0.00	774,307.00	774,307.00	233,527,885.00
STANISLAUS	CERES UNIFIED	50/71043-00-021	New Construction	G	10/21/2009	5/26/2010	0.00	787,815.00	787,815.00	234,315,700.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-027	Modernization	G	10/22/2009	5/26/2010	0.00	2,663,391.00	2,663,391.00	236,979,091.00
RIVERSIDE	PALM SPRINGS UNIFIED	50/67173-02-010	New Construction	G	10/23/2009	5/26/2010	0.00	14,527,035.00	14,527,035.00	251,506,126.00
LOS ANGELES	LAS VIRGENES UNIFIED	57/64683-00-008	Modernization	G	10/23/2009	5/26/2010	0.00	4,224,171.00	4,224,171.00	255,730,297.00
LOS ANGELES	LAS VIRGENES UNIFIED	57/64683-00-009	Modernization	G	10/23/2009	5/26/2010	0.00	2,273,255.00	2,273,255.00	258,003,552.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-491	Modernization	G	10/23/2009	5/26/2010	0.00	493,628.00	493,628.00	258,497,180.00
STANISLAUS	CERES UNIFIED	50/71043-00-023	New Construction	G	10/28/2009	5/26/2010	0.00	1,723,330.00	1,723,330.00	260,220,510.00
STANISLAUS	CERES UNIFIED	50/71043-00-024	New Construction	G	10/29/2009	5/26/2010	0.00	816,715.00	816,715.00	261,037,225.00
KERN	SOUTHERN KERN UNIFIED	50/63776-00-002	New Construction	D	10/30/2009	5/26/2010	876,064.50	1,570,833.50	2,446,898.00	263,484,123.00
KERN	SOUTHERN KERN UNIFIED	50/63776-00-003	New Construction	D	10/30/2009	5/26/2010	2,429,167.00	4,070,187.00	6,499,354.00	269,983,477.00
KERN	SOUTHERN KERN UNIFIED	50/63776-00-004	New Construction	D	10/30/2009	5/26/2010	548,938.00	1,495,550.00	2,044,488.00	272,027,965.00
SANTA CLARA	ALUM ROCK UNION ELEMENTARY	50/69369-00-008	New Construction	G	10/30/2009	5/26/2010	0.00	6,951,356.00	6,951,356.00	278,979,321.00
STANISLAUS	CERES UNIFIED	50/71043-00-011	New Construction	G	10/30/2009	5/26/2010	4,503,330.00	4,503,330.00	9,006,660.00	287,985,981.00
STANISLAUS	CERES UNIFIED	50/71043-00-012	New Construction	G	10/30/2009	5/26/2010	7,453,440.00	7,453,440.00	14,906,880.00	302,892,861.00
STANISLAUS	CERES UNIFIED	50/71043-00-025	New Construction	G	10/30/2009	5/26/2010	0.00	2,503,944.00	2,503,944.00	305,396,805.00
STANISLAUS	CERES UNIFIED	50/71043-00-026	New Construction	G	10/30/2009	5/26/2010	0.00	927,826.00	927,826.00	306,324,631.00
STANISLAUS	GRATTON ELEMENTARY	50/71084-00-001	New Construction	G	6/27/2008	6/23/2010	86,092.00	0.00	86,092.00	306,410,723.00
SANTA BARBARA	SANTA MARIA JOINT UNION HIGH	50/69310-00-003	New Construction	G	11/2/2009	6/23/2010	0.00	3,240,688.00	3,240,688.00	309,651,411.00
ORANGE	NEWPORT-MESA UNIFIED	57/66597-00-030	Modernization	G	11/3/2009	6/23/2010	0.00	821,196.00	821,196.00	310,472,607.00
SONOMA	DUNHAM	57/70672-00-001	Modernization	D	11/9/2009	6/23/2010	25,382.00	62,400.00	87,782.00	310,560,389.00
TULARE	PLEASANT VIEW ELEMENTARY	57/72058-00-001	Modernization	G	11/12/2009	6/23/2010	625,232.00	950,542.00	1,575,774.00	312,136,163.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-029	Modernization	G	11/16/2009	6/23/2010	0.00	2,528,207.00	2,528,207.00	314,664,370.00
STANISLAUS	CERES UNIFIED	50/71043-00-030	New Construction	D	11/18/2009	6/23/2010	1,567,605.50	1,567,605.50	3,135,211.00	317,799,581.00
MONTEREY	MONTEREY COUNTY OFFICE OF	50/10272-00-011	New Construction	D	11/23/2009	6/23/2010	352,710.00	352,710.00	705,420.00	318,505,001.00
YUBA	MARYSVILLE JOINT UNIFIED	50/72736-00-022	New Construction	G	12/2/2009	6/23/2010	0.00	4,846,416.00	4,846,416.00	323,351,417.00
YUBA	MARYSVILLE JOINT UNIFIED	50/72736-00-023	New Construction	G	12/2/2009	6/23/2010	0.00	5,107,174.00	5,107,174.00	328,458,591.00
GLENN	ORLAND JOINT UNIFIED	50/75481-00-004	New Construction	G	12/2/2009	6/23/2010	0.00	1,549,528.00	1,549,528.00	330,008,119.00
SANTA BARBARA	SOLVANG ELEMENTARY	50/69336-00-001	New Construction	G	12/8/2009	6/23/2010	0.00	1,874,288.00	1,874,288.00	331,882,407.00
GLENN	ORLAND JOINT UNIFIED	50/75481-00-005	New Construction	G	12/2/2009	6/23/2010	0.00	1,428,897.00	1,428,897.00	333,311,304.00
STANISLAUS	TURLOCK UNIFIED	57/75739-00-009	Modernization	G	12/10/2009	6/23/2010	0.00	534,144.00	534,144.00	333,845,448.00
STANISLAUS	STANISLAUS COUNTY OFFICE OF	50/10504-00-014	New Construction	G	12/15/2009	6/23/2010	4,324,077.50	4,351,089.50	8,675,167.00	342,520,615.00
LOS ANGELES	POMONA UNIFIED	57/64907-00-019	Modernization	G	12/15/2009	6/23/2010	0.00	994,877.00	994,877.00	343,515,492.00
STANISLAUS	CERES UNIFIED	50/71043-00-031	New Construction	G	12/17/2009	6/23/2010	3,463,426.00	3,463,426.00	6,926,852.00	350,442,344.00
STANISLAUS	CERES UNIFIED	57/71043-00-012	Modernization	G	12/24/2009	6/23/2010	0.00	1,085,459.00	1,085,459.00	351,527,803.00
LOS ANGELES	PASADENA UNIFIED	57/64881-00-033	Modernization	G	12/30/2009	6/23/2010	0.00	192,795.00	192,795.00	351,720,598.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-030	Modernization	G	1/19/2010	6/23/2010	0.00	1,116,497.00	1,116,497.00	352,837,095.00
STANISLAUS	TURLOCK UNIFIED	57/75739-00-016	Modernization	G	1/19/2010	6/23/2010	0.00	10,417,410.00	10,417,410.00	363,254,505.00
CONTRA COSTA	BYRON UNION ELEMENTARY	50/61663-00-005	New Construction	G	1/27/2010	6/23/2010	0.00	1,558,746.00	1,558,746.00	364,813,251.00
SUTTER	SUTTER UNION HIGH	50/71449-00-001	New Construction	G	1/27/2010	6/23/2010	0.00	3,498,458.00	3,498,458.00	368,311,709.00
LOS ANGELES	LOS ANGELES COUNTY OFFICE O	57/10199-00-022	Modernization	G	1/27/2010	6/23/2010	619,915.00	929,872.00	1,549,787.00	369,861,496.00
SACRAMENTO	ELK GROVE UNIFIED	54/67314-00-002	Charter	G	4/15/2010	6/23/2010	0.00	2,671,258.00	2,671,258.00	372,532,754.00
SAN BERNARDINO	CHINO VALLEY UNIFIED	50/67678-00-001	New Construction	L	7/13/2000	8/4/2010	0.00	232,843.00	232,843.00	372,765,597.00
EL DORADO	RESCUE UNION ELEMENTARY	50/61978-00-003	New Construction	L	3/28/2002	8/4/2010	0.00	547,445.00	547,445.00	373,313,042.00
PLACER	DRY CREEK JOINT ELEMENTARY	50/66803-00-007	New Construction	G	11/2/2009	8/4/2010	0.00	1,128,936.00	1,128,936.00	374,441,978.00
LOS ANGELES	ROWLAND UNIFIED	56/73452-00-001	Overcrowding Relief Grant	G	1/27/2010	8/4/2010	0.00	1,501,889.00	1,501,889.00	375,943,867.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-081	New Construction	G	1/29/2010	8/4/2010	0.00	1,052,872.00	1,052,872.00	376,996,739.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-082	New Construction	G	1/29/2010	8/4/2010	0.00	1,097,496.00	1,097,496.00	378,094,235.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-083	New Construction	G	1/29/2010	8/4/2010	0.00	1,116,891.00	1,116,891.00	379,211,126.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-084	New Construction	G	1/29/2010	8/4/2010	0.00	1,133,680.00	1,133,680.00	380,344,806.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-085	New Construction	G	1/29/2010	8/4/2010	0.00	874,641.00	874,641.00	381,219,447.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-086	New Construction	G	1/29/2010	8/4/2010	0.00	1,101,770.00	1,101,770.00	382,321,217.00
FRESNO	FRESNO UNIFIED	56/62166-00-001	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	1,715,629.00	1,715,629.00	384,036,846.00
LOS ANGELES	CENTINELA VALLEY UNION HIGH	56/64352-00-001	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	20,487,888.00	20,487,888.00	404,524,734.00
LOS ANGELES	LOS ANGELES UNIFIED	56/64733-00-003	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	13,036,587.00	13,036,587.00	417,561,321.00
SACRAMENTO	SACRAMENTO CITY UNIFIED	56/67439-00-001	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	706,687.00	706,687.00	418,268,008.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	56/67876-00-004	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	3,269,009.00	3,269,009.00	421,537,017.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	56/67876-00-005	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	3,132,776.00	3,132,776.00	424,669,793.00

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County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	56/67876-00-006	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	3,397,199.00	3,397,199.00	428,066,992.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	56/67876-00-007	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	3,089,807.00	3,089,807.00	431,156,799.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	56/67876-00-008	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	2,618,202.00	2,618,202.00	433,775,001.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	56/67876-00-009	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	3,962,118.00	3,962,118.00	437,737,119.00
SAN DIEGO	SWEETWATER UNION HIGH	56/68411-01-004	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	299,423.00	299,423.00	438,036,542.00
SAN DIEGO	SWEETWATER UNION HIGH	56/68411-01-005	Overcrowding Relief Grant	G	1/29/2010	8/4/2010	0.00	5,022,583.00	5,022,583.00	443,059,125.00
NAPA	NAPA VALLEY UNIFIED	57/66266-00-029	Modernization	G	1/29/2010	8/4/2010	0.00	2,166,418.00	2,166,418.00	445,225,543.00
EL DORADO	LAKE TAHOE UNIFIED	56/61903-00-002	Overcrowding Relief Grant	G	1/31/2010	8/4/2010	0.00	4,474,368.00	4,474,368.00	449,699,911.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-034	Modernization	G	2/3/2010	8/4/2010	0.00	2,092,679.00	2,092,679.00	451,792,590.00
SAN DIEGO	GROSSMONT UNION HIGH	57/68130-00-011	Modernization	G	2/3/2010	8/4/2010	0.00	9,633,372.00	9,633,372.00	461,425,962.00
SAN DIEGO	CARLSBAD UNIFIED	57/73551-00-006	Modernization	G	2/3/2010	8/4/2010	0.00	2,200,261.00	2,200,261.00	463,626,223.00
SACRAMENTO	TWIN RIVERS UNIFIED	57/76505-00-037	Modernization	G	2/3/2010	8/4/2010	0.00	1,590,228.00	1,590,228.00	465,216,451.00
MERCED	MCSWAIN UNION ELEMENTARY	57/65763-00-002	Modernization	D	2/4/2010	8/4/2010	49,503.00	74,255.00	123,758.00	465,340,209.00
SAN DIEGO	GROSSMONT UNION HIGH	57/68130-00-010	Modernization	G	2/4/2010	8/4/2010	0.00	14,513,798.00	14,513,798.00	479,854,007.00
SAN DIEGO	SWEETWATER UNION HIGH	57/68411-00-037	Modernization	G	2/8/2010	8/4/2010	0.00	431,718.00	431,718.00	480,285,725.00
SAN DIEGO	SWEETWATER UNION HIGH	57/68411-00-038	Modernization	G	2/8/2010	8/4/2010	0.00	728,732.00	728,732.00	481,014,457.00
KERN	SIERRA SANDS UNIFIED	57/73742-00-007	Modernization	G	2/8/2010	8/4/2010	0.00	977,418.00	977,418.00	481,991,875.00
SAN DIEGO	SWEETWATER UNION HIGH	57/68411-00-039	Modernization	G	2/9/2010	8/4/2010	0.00	10,637,681.00	10,637,681.00	492,629,556.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-054	Modernization	G	2/16/2010	8/4/2010	0.00	1,053,620.00	1,053,620.00	493,683,176.00
LOS ANGELES	GLENDORA UNIFIED	57/64576-00-017	Modernization	G	2/16/2010	8/4/2010	0.00	3,917,016.00	3,917,016.00	497,600,192.00
MENDOCINO	UKIAH UNIFIED	57/65615-00-008	Modernization	G	2/16/2010	8/4/2010	0.00	2,504,273.00	2,504,273.00	500,104,465.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-029	Modernization	G	2/16/2010	8/4/2010	0.00	607,932.00	607,932.00	500,712,397.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-035	Modernization	G	2/17/2010	8/4/2010	0.00	3,189,425.00	3,189,425.00	503,901,822.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-037	Modernization	G	2/17/2010	8/4/2010	0.00	2,400,557.00	2,400,557.00	506,302,379.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-038	Modernization	G	2/17/2010	8/4/2010	0.00	1,280,935.00	1,280,935.00	507,583,314.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-036	Modernization	G	2/18/2010	8/4/2010	0.00	934,729.00	934,729.00	508,518,043.00
SAN DIEGO	SWEETWATER UNION HIGH	57/68411-00-040	Modernization	G	2/18/2010	8/4/2010	0.00	192,148.00	192,148.00	508,710,191.00
SAN DIEGO	SWEETWATER UNION HIGH	57/68411-00-041	Modernization	G	2/18/2010	8/4/2010	0.00	1,030,464.00	1,030,464.00	509,740,655.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-030	Modernization	G	2/18/2010	8/4/2010	0.00	1,101,716.00	1,101,716.00	510,842,371.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-031	Modernization	G	2/18/2010	8/4/2010	0.00	1,468,535.00	1,468,535.00	512,310,906.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-055	Modernization	G	2/22/2010	8/4/2010	0.00	1,690,553.00	1,690,553.00	514,001,459.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-056	Modernization	G	2/22/2010	8/4/2010	0.00	2,738,099.00	2,738,099.00	516,739,558.00
ALAMEDA	SAN LEANDRO UNIFIED	57/61291-00-017	Modernization	G	2/22/2010	8/4/2010	0.00	138,001.00	138,001.00	516,877,559.00
ALAMEDA	SAN LEANDRO UNIFIED	57/61291-00-018	Modernization	G	2/22/2010	8/4/2010	0.00	617,110.00	617,110.00	517,494,669.00
ORANGE	CYPRESS ELEMENTARY	57/66480-00-001	Modernization	G	2/22/2010	8/4/2010	0.00	1,594,849.00	1,594,849.00	519,089,518.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-039	Modernization	G	2/22/2010	8/4/2010	0.00	1,500,172.00	1,500,172.00	520,589,690.00
TULARE	PORTERVILLE UNIFIED	57/75523-00-010	Modernization	G	2/22/2010	8/4/2010	0.00	1,399,401.00	1,399,401.00	521,989,091.00
TULARE	PORTERVILLE UNIFIED	57/75523-00-011	Modernization	G	2/22/2010	8/4/2010	0.00	564,718.00	564,718.00	522,553,809.00
TULARE	PORTERVILLE UNIFIED	57/75523-00-012	Modernization	G	2/22/2010	8/4/2010	0.00	413,217.00	413,217.00	522,967,026.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-057	Modernization	G	2/24/2010	8/4/2010	0.00	1,790,887.00	1,790,887.00	524,757,913.00
LASSEN	SUSANVILLE	57/64196-00-001	Modernization	G	2/24/2010	8/4/2010	0.00	2,138,724.00	2,138,724.00	526,896,637.00
LOS ANGELES	ROWLAND UNIFIED	57/73452-00-022	Modernization	G	2/24/2010	8/4/2010	0.00	295,169.00	295,169.00	527,191,806.00
YUBA	MARYSVILLE JOINT UNIFIED	50/72736-00-024	New Construction	G	2/26/2010	8/4/2010	0.00	1,809,828.00	1,809,828.00	529,001,634.00
ALAMEDA	NEW HAVEN UNIFIED	57/61242-00-008	Modernization	G	2/26/2010	8/4/2010	0.00	4,288,995.00	4,288,995.00	533,290,629.00
SAN DIEGO	RANCHO SANTA FE ELEMENTAR	57/68312-00-004	Modernization	G	3/2/2010	8/4/2010	0.00	1,868,498.00	1,868,498.00	535,159,127.00
SAN DIEGO	POWAY UNIFIED	57/68296-00-021	Modernization	G	3/11/2010	8/4/2010	0.00	2,209,053.00	2,209,053.00	537,368,180.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-058	Modernization	G	3/18/2010	8/4/2010	0.00	1,774,522.00	1,774,522.00	539,142,702.00
CONTRA COSTA	WEST CONTRA COSTA UNIFIED	57/61796-00-035	Modernization	G	3/18/2010	8/4/2010	0.00	12,797,988.00	12,797,988.00	551,940,690.00
PLACER	LOOMIS UNION ELEMENTARY	57/66845-00-004	Modernization	G	3/22/2010	8/4/2010	0.00	1,247,996.00	1,247,996.00	553,188,686.00
ALAMEDA	PIEDMONT CITY UNIFIED	57/61275-00-002	Modernization	G	3/26/2010	8/4/2010	0.00	4,916,716.00	4,916,716.00	558,105,402.00
ALAMEDA	PIEDMONT CITY UNIFIED	57/61275-00-003	Modernization	G	3/26/2010	8/4/2010	0.00	1,126,797.00	1,126,797.00	559,232,199.00
ORANGE	PLACENTIA-YORBA LINDA UNIFIE	57/66647-00-027	Modernization	G	3/26/2010	8/4/2010	0.00	676,577.00	676,577.00	559,908,776.00
ORANGE	PLACENTIA-YORBA LINDA UNIFIE	57/66647-00-028	Modernization	G	3/26/2010	8/4/2010	0.00	810,150.00	810,150.00	560,718,926.00
LOS ANGELES	LONG BEACH UNIFIED	50/64725-00-009	New Construction	L	9/23/2005	8/25/2010	0.00	268,311.00	268,311.00	560,987,237.00
LOS ANGELES	LOS ANGELES UNIFIED	53/64733-00-483	Critically Overcrowded Scho	G	10/27/2008	8/25/2010	0.00	4,871.00	4,871.00	560,992,108.00
LOS ANGELES	LOS ANGELES UNIFIED	53/64733-00-538	Critically Overcrowded Scho	G	10/27/2008	8/25/2010	0.00	22,602.00	22,602.00	561,014,710.00
LOS ANGELES	BALDWIN PARK UNIFIED	50/64287-00-007	New Construction	G	11/25/2008	8/25/2010	0.00	340.00	340.00	561,015,050.00
LOS ANGELES	BALDWIN PARK UNIFIED	50/64287-00-008	New Construction	G	12/18/2008	8/25/2010	0.00	5,075.00	5,075.00	561,020,125.00
LOS ANGELES	SAUGUS UNION ELEMENTARY	50/64998-00-018	New Construction	G	5/11/2009	8/25/2010	0.00	199.00	199.00	561,020,324.00
SAN DIEGO	RANCHO SANTA FE ELEMENTAR	50/68312-00-001	New Construction	G	11/2/2009	8/25/2010	0.00	717,964.00	717,964.00	561,738,288.00
LOS ANGELES	LOS ANGELES UNIFIED	53/64733-00-430	Critically Overcrowded Scho	G	11/2/2009	8/25/2010	0.00	16,022,729.00	16,022,729.00	577,761,017.00

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County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
LOS ANGELES	LOS ANGELES UNIFIED	53/64733-00-520	Critically Overcrowded Scho	G	11/2/2009	8/25/2010	0.00	21,155,846.00	21,155,846.00	598,916,863.00
LOS ANGELES	LOS ANGELES UNIFIED	53/64733-00-602	Critically Overcrowded Scho	G	11/2/2009	8/25/2010	0.00	10,005,164.00	10,005,164.00	608,922,027.00
LOS ANGELES	LOS ANGELES UNIFIED	53/64733-00-606	Critically Overcrowded Scho	G	11/2/2009	8/25/2010	0.00	11,348,345.00	11,348,345.00	620,270,372.00
ORANGE	ANAHEIM CITY	57/66423-00-026	Modernization	G	3/29/2010	8/25/2010	0.00	3,230,909.00	3,230,909.00	623,501,281.00
RIVERSIDE	CORONA-NORCO UNIFIED	50/67033-00-030	New Construction	G	3/30/2010	8/25/2010	0.00	7,652,609.00	7,652,609.00	631,153,890.00
CALAVERAS	CALAVERAS UNIFIED	57/61564-00-007	Modernization	G	4/1/2010	8/25/2010	0.00	2,423,235.00	2,423,235.00	633,577,125.00
HUMBOLDT	CUTTEN ELEMENTARY	57/62745-00-001	Modernization	D	4/1/2010	8/25/2010	33,280.00	49,920.00	83,200.00	633,660,325.00
SANTA CLARA	MORELAND ELEMENTARY	57/69575-00-006	Modernization	G	4/1/2010	8/25/2010	0.00	1,873,664.00	1,873,664.00	635,533,989.00
SANTA CLARA	MORELAND ELEMENTARY	57/69575-00-007	Modernization	G	4/1/2010	8/25/2010	0.00	2,098,445.00	2,098,445.00	637,632,434.00
ALAMEDA	NEW HAVEN UNIFIED	50/61242-00-010	New Construction	G	4/5/2010	8/25/2010	0.00	831,397.00	831,397.00	638,463,831.00
TULARE	STRATHMORE UNION ELEMENTA	50/72157-00-004	New Construction	G	4/5/2010	8/25/2010	2,145,321.00	2,408,790.00	4,554,111.00	643,017,942.00
ALAMEDA	NEW HAVEN UNIFIED	57/61242-00-009	Modernization	G	4/5/2010	8/25/2010	0.00	977,417.00	977,417.00	643,995,359.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-059	Modernization	G	4/5/2010	8/25/2010	0.00	1,164,342.00	1,164,342.00	645,159,701.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-060	Modernization	G	4/5/2010	8/25/2010	0.00	1,432,557.00	1,432,557.00	646,592,258.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-061	Modernization	G	4/5/2010	8/25/2010	0.00	1,735,036.00	1,735,036.00	648,327,294.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-062	Modernization	G	4/5/2010	8/25/2010	0.00	1,362,366.00	1,362,366.00	649,689,660.00
ALAMEDA	OAKLAND UNIFIED	57/61259-00-063	Modernization	G	4/5/2010	8/25/2010	0.00	966,009.00	966,009.00	650,655,669.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-516	Modernization	G	4/5/2010	8/25/2010	0.00	517,205.00	517,205.00	651,172,874.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-518	Modernization	G	4/5/2010	8/25/2010	0.00	1,659,868.00	1,659,868.00	652,832,742.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-519	Modernization	G	4/5/2010	8/25/2010	0.00	1,536,836.00	1,536,836.00	654,369,578.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-520	Modernization	G	4/5/2010	8/25/2010	0.00	644,908.00	644,908.00	655,014,486.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-13-008	Modernization	G	4/5/2010	8/25/2010	0.00	3,257,201.00	3,257,201.00	658,271,687.00
SISKIYOU	DUNSMUIR JOINT UNION HIGH	57/70250-00-001	Modernization	G	4/7/2010	8/25/2010	756,678.00	1,135,910.00	1,892,588.00	660,164,275.00
LOS ANGELES	PALOS VERDES PENINSULA UNIF	50/64865-00-005	New Construction	G	4/12/2010	8/25/2010	0.00	544,519.00	544,519.00	660,708,794.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-040	Modernization	G	4/12/2010	8/25/2010	0.00	2,329,684.00	2,329,684.00	663,038,478.00
SAN FRANCISCO	SAN FRANCISCO UNIFIED	57/68478-00-031	Modernization	G	4/13/2010	8/25/2010	0.00	2,258,594.00	2,258,594.00	665,297,072.00
SAN MATEO	SEQUOIA UNION HIGH	50/69062-01-001	New Construction	G	4/14/2010	8/25/2010	0.00	1,954,673.00	1,954,673.00	667,251,745.00
LOS ANGELES	EASTSIDE UNION	50/64477-00-007	New Construction	G	4/15/2010	8/25/2010	10,635,636.00	10,635,636.00	21,271,272.00	688,523,017.00
SAN BERNARDINO	UPLAND UNIFIED	50/75069-00-012	New Construction	G	4/19/2010	8/25/2010	0.00	3,501,503.00	3,501,503.00	692,024,520.00
SAN JOAQUIN	STOCKTON UNIFIED	57/68676-00-028	Modernization	G	4/19/2010	8/25/2010	0.00	4,157,183.00	4,157,183.00	696,181,703.00
SAN JOAQUIN	STOCKTON UNIFIED	57/68676-00-029	Modernization	G	4/19/2010	8/25/2010	0.00	4,607,947.00	4,607,947.00	700,789,650.00
EL DORADO	PLACERVILLE UNION ELEMENTAI	57/61952-00-003	Modernization	G	4/20/2010	8/25/2010	0.00	1,528,745.00	1,528,745.00	702,318,395.00
VENTURA	SIMI VALLEY UNIFIED	57/72603-00-019	Modernization	G	4/20/2010	8/25/2010	0.00	3,168,715.00	3,168,715.00	705,487,110.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-032	Modernization	G	4/21/2010	8/25/2010	0.00	562,443.00	562,443.00	706,049,553.00
BUTTE	BANGOR UNION ELEMENTARY	50/61382-00-001	New Construction	G	4/22/2010	8/25/2010	535,436.00	580,057.00	1,115,493.00	707,165,046.00
LOS ANGELES	PALOS VERDES PENINSULA UNIF	57/64865-00-021	Modernization	G	4/22/2010	8/25/2010	0.00	415,306.00	415,306.00	707,580,352.00
LOS ANGELES	PALOS VERDES PENINSULA UNIF	57/64865-00-022	Modernization	G	4/22/2010	8/25/2010	0.00	1,018,754.00	1,018,754.00	708,599,106.00
SOLANO	FAIRFIELD-SUISUN UNIFIED	50/70540-00-024	New Construction	G	4/23/2010	8/25/2010	0.00	1,661,915.00	1,661,915.00	710,261,021.00
LOS ANGELES	PALOS VERDES PENINSULA UNIF	57/64865-00-023	Modernization	G	4/23/2010	8/25/2010	0.00	962,838.00	962,838.00	711,223,859.00
LOS ANGELES	PALOS VERDES PENINSULA UNIF	57/64865-00-024	Modernization	G	4/23/2010	8/25/2010	0.00	1,057,477.00	1,057,477.00	712,281,336.00
ORANGE	IRVINE UNIFIED	57/73650-00-020	Modernization	G	4/26/2010	8/25/2010	0.00	2,460,974.00	2,460,974.00	714,742,310.00
SAN DIEGO	POWAY UNIFIED	57/68296-00-022	Modernization	G	4/28/2010	8/25/2010	0.00	1,214,123.00	1,214,123.00	715,956,433.00
SAN DIEGO	POWAY UNIFIED	57/68296-00-023	Modernization	G	4/28/2010	8/25/2010	0.00	1,246,814.00	1,246,814.00	717,203,247.00
FRESNO	MENDOTA UNIFIED	50/75127-00-003	New Construction	G	5/3/2010	8/25/2010	0.00	2,634,106.00	2,634,106.00	719,837,353.00
LOS ANGELES	CENTINELA VALLEY UNION HIGH	54/64352-00-007	Charter	G	6/6/2010	8/25/2010	0.00	9,830,376.00	9,830,376.00	729,667,729.00
MONTEREY	KING CITY JOINT UNION HIGH	57/66068-00-001	Modernization	G	9/30/2005	10/6/2010	6,243.00	9,365.00	15,608.00	729,683,337.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-073	New Construction	G	10/30/2009	10/6/2010	0.00	4,037,470.00	4,037,470.00	733,720,807.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-075	New Construction	G	10/30/2009	10/6/2010	0.00	6,747,736.00	6,747,736.00	740,468,543.00
SAN BERNARDINO	SAN BERNARDINO CITY UNIFIED	50/67876-00-076	New Construction	G	10/30/2009	10/6/2010	0.00	7,838,891.00	7,838,891.00	748,307,434.00
SAN DIEGO	POWAY UNIFIED	59/68296-00-003	Career Tech Rehabilitation	G	2/23/2010	10/6/2010	0.00	588,408.00	588,408.00	748,895,842.00
SAN BERNARDINO	SNOWLINE JOINT UNIFIED	55/73957-00-001	Career Tech New Construct	G	3/3/2010	10/6/2010	0.00	1,093,051.00	1,093,051.00	749,988,893.00
SAN BERNARDINO	SNOWLINE JOINT UNIFIED	55/73957-00-002	Career Tech New Construct	G	3/3/2010	10/6/2010	0.00	1,031,968.00	1,031,968.00	751,020,861.00
SAN BERNARDINO	RIALTO UNIFIED	59/67850-00-001	Career Tech Rehabilitation	G	3/3/2010	10/6/2010	0.00	1,114,449.00	1,114,449.00	752,135,310.00
TULARE	LINDSAY UNIFIED	55/71993-00-001	Career Tech New Construct	G	3/4/2010	10/6/2010	0.00	837,333.00	837,333.00	752,972,643.00
SANTA CLARA	CAMPBELL UNION HIGH	55/69401-00-006	Career Tech New Construct	G	3/8/2010	10/6/2010	0.00	179,986.00	179,986.00	753,152,629.00
SANTA CLARA	EAST SIDE UNION HIGH	55/69427-00-001	Career Tech New Construct	G	3/9/2010	10/6/2010	0.00	1,314,642.00	1,314,642.00	754,467,271.00
RIVERSIDE	DESERT SANDS UNIFIED	55/67058-00-003	Career Tech New Construct	G	3/10/2010	10/6/2010	0.00	2,130,036.00	2,130,036.00	756,597,307.00
RIVERSIDE	DESERT SANDS UNIFIED	55/67058-00-004	Career Tech New Construct	G	3/10/2010	10/6/2010	0.00	743,908.00	743,908.00	757,341,215.00
RIVERSIDE	DESERT SANDS UNIFIED	55/67058-00-005	Career Tech New Construct	G	3/10/2010	10/6/2010	0.00	1,040,611.00	1,040,611.00	758,381,826.00
RIVERSIDE	DESERT SANDS UNIFIED	55/67058-00-006	Career Tech New Construct	G	3/10/2010	10/6/2010	0.00	2,666,732.00	2,666,732.00	761,048,558.00
LOS ANGELES	LONG BEACH UNIFIED	59/64725-00-003	Career Tech Rehabilitation	G	3/11/2010	10/6/2010	0.00	1,500,000.00	1,500,000.00	762,548,558.00

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as of December 15, 2010

County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
LOS ANGELES	LONG BEACH UNIFIED	59/64725-00-004	Career Tech Rehabilitation	G	3/11/2010	10/6/2010	0.00	1,500,000.00	1,500,000.00	764,048,558.00
ALAMEDA	DUBLIN UNIFIED	59/75093-00-001	Career Tech Rehabilitation	G	3/11/2010	10/6/2010	0.00	533,605.00	533,605.00	764,582,163.00
MADERA	CHAWANAKEE UNIFIED	55/75606-00-001	Career Tech New Construct	G	3/16/2010	10/6/2010	0.00	2,086,640.00	2,086,640.00	766,668,803.00
LOS ANGELES	BALDWIN PARK UNIFIED	55/64287-00-004	Career Tech New Construct	G	3/22/2010	10/6/2010	0.00	1,804,601.00	1,804,601.00	768,473,404.00
SAN DIEGO	SAN DIEGO UNIFIED	55/68338-00-001	Career Tech New Construct	G	3/22/2010	10/6/2010	0.00	2,918,735.00	2,918,735.00	771,392,139.00
SAN DIEGO	SAN DIEGO UNIFIED	55/68338-00-004	Career Tech New Construct	G	3/22/2010	10/6/2010	0.00	1,470,162.00	1,470,162.00	772,862,301.00
SAN JOAQUIN	LINDEN UNIFIED	55/68577-00-002	Career Tech New Construct	G	3/22/2010	10/6/2010	0.00	2,602,465.00	2,602,465.00	775,464,766.00
SANTA CLARA	METRO ED. DISTRICT JPA ROC/P	59/40360-00-016	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	222,258.00	222,258.00	775,687,024.00
SAN DIEGO	CORONADO UNIFIED	59/68031-00-001	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	1,360,199.00	1,360,199.00	777,047,223.00
SAN DIEGO	SAN DIEGO UNIFIED	59/68338-00-002	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	473,045.00	473,045.00	777,520,268.00
SAN DIEGO	SAN DIEGO UNIFIED	59/68338-00-004	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	1,380,824.00	1,380,824.00	778,901,092.00
SAN DIEGO	SAN DIEGO UNIFIED	59/68338-00-006	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	473,110.00	473,110.00	779,374,202.00
SAN DIEGO	SAN DIEGO UNIFIED	59/68338-00-007	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	1,022,484.00	1,022,484.00	780,396,686.00
SAN DIEGO	SAN DIEGO UNIFIED	59/68338-00-008	Career Tech Rehabilitation	G	3/22/2010	10/6/2010	0.00	1,500,000.00	1,500,000.00	781,896,686.00
ALAMEDA	NEW HAVEN UNIFIED	59/61242-00-001	Career Tech Rehabilitation	G	3/23/2010	10/6/2010	0.00	394,342.00	394,342.00	782,291,028.00
KERN	KERN HIGH	59/63529-00-017	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	434,224.00	434,224.00	782,725,252.00
KERN	KERN HIGH	59/63529-00-019	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	79,997.00	79,997.00	782,805,249.00
KERN	KERN HIGH	59/63529-00-021	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	838,925.00	838,925.00	783,644,174.00
KERN	KERN HIGH	59/63529-00-022	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	192,803.00	192,803.00	783,836,977.00
KERN	KERN HIGH	59/63529-00-027	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	596,824.00	596,824.00	784,433,801.00
KERN	KERN HIGH	59/63529-00-030	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	152,203.00	152,203.00	784,586,004.00
RIVERSIDE	RIVERSIDE UNIFIED	59/67215-00-001	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	579,687.00	579,687.00	785,165,691.00
ORANGE	TUSTIN UNIFIED	59/73643-00-003	Career Tech Rehabilitation	G	3/24/2010	10/6/2010	0.00	73,732.00	73,732.00	785,239,423.00
CONTRA COSTA	SAN RAMON VALLEY UNIFIED	55/61804-00-005	Career Tech New Construct	G	3/25/2010	10/6/2010	0.00	817,130.00	817,130.00	786,056,553.00
STANISLAUS	CERES UNIFIED	59/71043-00-003	Career Tech Rehabilitation	G	3/25/2010	10/6/2010	0.00	1,201,300.00	1,201,300.00	787,257,853.00
SAN BERNARDINO	FONTANA UNIFIED	55/67710-00-001	Career Tech New Construct	G	3/26/2010	10/6/2010	0.00	1,445,609.00	1,445,609.00	788,703,462.00
SONOMA	SANTA ROSA HIGH	55/70920-00-002	Career Tech New Construct	G	3/26/2010	10/6/2010	0.00	2,665,422.00	2,665,422.00	791,368,884.00
EL DORADO	EL DORADO UNION HIGH	59/61853-00-001	Career Tech Rehabilitation	G	3/26/2010	10/6/2010	0.00	821,617.00	821,617.00	792,190,501.00
KERN	KERN COUNTY OFFICE OF EDUC	55/10157-98-001	Career Tech New Construct	G	3/29/2010	10/6/2010	0.00	723,600.00	723,600.00	792,914,101.00
SAN DIEGO	ESCONDIDO UNION HIGH	55/68106-00-001	Career Tech New Construct	G	3/29/2010	10/6/2010	0.00	146,000.00	146,000.00	793,060,101.00
SAN JOAQUIN	STOCKTON UNIFIED	59/68676-00-001	Career Tech Rehabilitation	G	3/29/2010	10/6/2010	0.00	1,499,715.00	1,499,715.00	794,559,816.00
RIVERSIDE	PERRIS UNION HIGH	55/67207-00-001	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	2,250,000.00	2,250,000.00	796,809,816.00
SAN DIEGO	GROSSMONT UNION HIGH	55/68130-13-001	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	799,809,816.00
SAN MATEO	SEQUOIA UNION HIGH	55/69062-00-002	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	802,809,816.00
SAN MATEO	SEQUOIA UNION HIGH	55/69062-00-003	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	805,809,816.00
SAN MATEO	SEQUOIA UNION HIGH	55/69062-00-005	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	808,809,816.00
SAN MATEO	SEQUOIA UNION HIGH	55/69062-00-007	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	811,809,816.00
SANTA CLARA	PALO ALTO UNIFIED	55/69641-00-001	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	814,809,816.00
SANTA CLARA	PALO ALTO UNIFIED	55/69641-00-002	Career Tech New Construct	G	3/30/2010	10/6/2010	0.00	2,720,829.00	2,720,829.00	817,530,645.00
MONTEREY	MONTEREY COUNTY OFFICE OF	59/10272-00-001	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	1,324,484.00	1,324,484.00	818,855,129.00
SAN MATEO	SAN MATEO UNION HIGH	59/69047-00-002	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	1,116,932.00	1,116,932.00	819,972,061.00
SAN BERNARDINO	COLTON-REDLANDS-YUCAIPA RC	59/74138-00-010	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	9,281.00	9,281.00	819,981,342.00
SAN BERNARDINO	COLTON-REDLANDS-YUCAIPA RC	59/74138-00-011	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	7,313.00	7,313.00	819,988,655.00
SAN BERNARDINO	COLTON-REDLANDS-YUCAIPA RC	59/74138-00-012	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	11,578.00	11,578.00	820,000,233.00
SAN BERNARDINO	COLTON-REDLANDS-YUCAIPA RC	59/74138-00-013	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	9,437.00	9,437.00	820,009,670.00
SAN BERNARDINO	COLTON-REDLANDS-YUCAIPA RC	59/74138-00-014	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	42,745.00	42,745.00	820,052,415.00
SAN BERNARDINO	COLTON-REDLANDS-YUCAIPA RC	59/74138-00-022	Career Tech Rehabilitation	G	3/30/2010	10/6/2010	0.00	3,188.00	3,188.00	820,055,603.00
EL DORADO	LAKE TAHOE UNIFIED	55/61903-00-004	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	2,206,024.00	2,206,024.00	822,261,627.00
LOS ANGELES	ARCADIA UNIFIED	55/64261-00-001	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	825,261,627.00
LOS ANGELES	ARCADIA UNIFIED	55/64261-00-002	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	2,316,200.00	2,316,200.00	827,577,827.00
LOS ANGELES	ARCADIA UNIFIED	55/64261-00-003	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	997,024.00	997,024.00	828,574,851.00
LOS ANGELES	LOS ANGELES UNIFIED	55/64733-00-007	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	1,963,579.00	1,963,579.00	830,538,430.00
LOS ANGELES	LOS ANGELES UNIFIED	55/64733-00-008	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	3,000,000.00	3,000,000.00	833,538,430.00
LOS ANGELES	LOS ANGELES UNIFIED	55/64733-00-009	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	1,774,734.00	1,774,734.00	835,313,164.00
LOS ANGELES	LOS ANGELES UNIFIED	55/64733-00-013	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	1,533,959.00	1,533,959.00	836,847,123.00
NAPA	NAPA VALLEY UNIFIED	55/66266-00-003	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	493,016.00	493,016.00	837,340,139.00
NAPA	NAPA VALLEY UNIFIED	55/66266-00-004	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	545,629.00	545,629.00	837,885,768.00
SIERRA	SIERRA-PLUMAS JOINT UNIFIED	55/70177-00-001	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	174,412.00	174,412.00	838,060,180.00
SISKIYOU	SISKIYOU UNION HIGH	55/70466-00-002	Career Tech New Construct	G	4/1/2010	10/6/2010	0.00	296,772.00	296,772.00	838,356,952.00
LOS ANGELES	LOS ANGELES UNIFIED	59/64733-00-027	Career Tech Rehabilitation	G	4/1/2010	10/6/2010	0.00	50,000.00	50,000.00	838,406,952.00
LOS ANGELES	LOS ANGELES UNIFIED	59/64733-00-028	Career Tech Rehabilitation	G	4/1/2010	10/6/2010	0.00	1,401,783.00	1,401,783.00	839,808,735.00

SCHOOL FACILITY PROGRAM
UNFUNDED APPROVALS
as of December 15, 2010

County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
SANTA CLARA	GILROY UNIFIED	59/69484-00-001	Career Tech Rehabilitation	G	4/1/2010	10/6/2010	0.00	1,191,901.00	1,191,901.00	841,000,636.00
SISKIYOU	SISKIYOU UNION HIGH	59/70466-00-001	Career Tech Rehabilitation	G	4/1/2010	10/6/2010	0.00	143,380.00	143,380.00	841,144,016.00
STANISLAUS	MODESTO CITY HIGH	59/71175-00-001	Career Tech Rehabilitation	G	4/1/2010	10/6/2010	0.00	337,760.00	337,760.00	841,481,776.00
SAN JOAQUIN	TRACY JOINT UNIFIED	59/75499-00-007	Career Tech Rehabilitation	G	4/1/2010	10/6/2010	0.00	514,087.00	514,087.00	841,995,863.00
FRESNO	FRESNO UNIFIED	57/62166-00-118	Modernization	G	5/10/2010	10/6/2010	0.00	1,973,604.00	1,973,604.00	843,969,467.00
FRESNO	FRESNO UNIFIED	57/62166-00-119	Modernization	G	5/10/2010	10/6/2010	0.00	871,290.00	871,290.00	844,840,757.00
FRESNO	FRESNO UNIFIED	57/62166-00-120	Modernization	G	5/10/2010	10/6/2010	0.00	1,764,071.00	1,764,071.00	846,604,828.00
SAN DIEGO	GROSSMONT UNION HIGH	57/68130-00-012	Modernization	G	5/10/2010	10/6/2010	0.00	14,257,220.00	14,257,220.00	860,862,048.00
KERN	BAKERSFIELD CITY ELEMENTAR	50/63321-00-019	New Construction	G	5/12/2010	10/6/2010	0.00	1,134,760.00	1,134,760.00	861,996,808.00
FRESNO	CLOVIS UNIFIED	57/62117-00-023	Modernization	G	5/12/2010	10/6/2010	0.00	2,825,877.00	2,825,877.00	864,822,685.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-012	Modernization	G	5/12/2010	10/6/2010	0.00	2,394,545.00	2,394,545.00	867,217,230.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-013	Modernization	G	5/12/2010	10/6/2010	0.00	2,190,981.00	2,190,981.00	869,408,211.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-014	Modernization	G	5/12/2010	10/6/2010	0.00	1,566,228.00	1,566,228.00	870,974,439.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-015	Modernization	G	5/12/2010	10/6/2010	0.00	2,031,958.00	2,031,958.00	873,006,397.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-016	Modernization	G	5/12/2010	10/6/2010	0.00	1,810,504.00	1,810,504.00	874,816,901.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-017	Modernization	G	5/12/2010	10/6/2010	0.00	2,177,105.00	2,177,105.00	876,994,006.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-018	Modernization	G	5/12/2010	10/6/2010	0.00	2,071,567.00	2,071,567.00	879,065,573.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-019	Modernization	G	5/12/2010	10/6/2010	0.00	2,818,067.00	2,818,067.00	881,883,640.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-020	Modernization	G	5/12/2010	10/6/2010	0.00	1,361,367.00	1,361,367.00	883,245,007.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-021	Modernization	G	5/12/2010	10/6/2010	0.00	1,850,922.00	1,850,922.00	885,095,929.00
ORANGE	OCEAN VIEW ELEMENTARY	57/66613-00-022	Modernization	G	5/12/2010	10/6/2010	0.00	1,970,994.00	1,970,994.00	887,066,923.00
TULARE	TULARE COUNTY OFFICE OF EDU	50/10546-00-028	New Construction	G	5/17/2010	10/6/2010	413,897.00	425,131.00	839,028.00	887,905,951.00
TULARE	OAK VALLEY UNION ELEMENTAR	50/72017-00-002	New Construction	J	5/17/2010	10/6/2010	92,013.00	129,810.00	221,823.00	888,127,774.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-521	Modernization	G	5/17/2010	10/6/2010	0.00	433,819.00	433,819.00	888,561,593.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-16-008	Modernization	G	5/17/2010	10/6/2010	0.00	1,594,359.00	1,594,359.00	890,155,952.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-39-005	Modernization	G	5/17/2010	10/6/2010	0.00	820,110.00	820,110.00	890,976,062.00
LOS ANGELES	POMONA UNIFIED	57/64907-00-021	Modernization	G	5/17/2010	10/6/2010	0.00	1,141,692.00	1,141,692.00	892,117,754.00
ORANGE	TUSTIN UNIFIED	50/73643-00-014	New Construction	G	5/18/2010	10/6/2010	0.00	3,081,710.00	3,081,710.00	895,199,464.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-041	Modernization	G	5/19/2010	10/6/2010	0.00	3,565,352.00	3,565,352.00	898,764,816.00
SAN DIEGO	GROSSMONT UNION HIGH	57/68130-00-013	Modernization	G	5/24/2010	10/6/2010	0.00	1,576,237.00	1,576,237.00	900,341,053.00
TULARE	TULARE CITY ELEMENTARY	50/72231-00-004	New Construction	G	5/26/2010	10/6/2010	0.00	13,041,975.00	13,041,975.00	913,383,028.00
FRESNO	SANGER UNIFIED	50/62414-00-010	New Construction	G	5/27/2010	10/6/2010	0.00	901,430.00	901,430.00	914,284,458.00
FRESNO	SANGER UNIFIED	50/62414-00-011	New Construction	G	5/27/2010	10/6/2010	0.00	752,391.00	752,391.00	915,036,849.00
FRESNO	SANGER UNIFIED	50/62414-00-012	New Construction	G	5/27/2010	10/6/2010	0.00	1,151,832.00	1,151,832.00	916,188,681.00
FRESNO	SANGER UNIFIED	50/62414-00-013	New Construction	G	5/27/2010	10/6/2010	0.00	659,641.00	659,641.00	916,848,322.00
SANTA CLARA	EAST SIDE UNION HIGH	57/69427-00-024	Modernization	G	5/27/2010	10/6/2010	0.00	4,877,076.00	4,877,076.00	921,725,398.00
LOS ANGELES	INGLEWOOD UNIFIED	56/64634-00-002	Overcrowding Relief Grant	G	6/1/2010	10/6/2010	0.00	6,391,129.00	6,391,129.00	928,116,527.00
BUTTE	BIGGS UNIFIED	57/61408-00-001	Modernization	D	6/3/2010	10/6/2010	74,880.00	112,320.00	187,200.00	928,303,727.00
BUTTE	BIGGS UNIFIED	57/61408-00-002	Modernization	D	6/3/2010	10/6/2010	56,994.00	190,744.00	247,738.00	928,551,465.00
BUTTE	BIGGS UNIFIED	57/61408-00-003	Modernization	D	6/3/2010	10/6/2010	59,587.00	89,380.00	148,967.00	928,700,432.00
BUTTE	BIGGS UNIFIED	57/61408-00-004	Modernization	D	6/3/2010	10/6/2010	17,638.00	26,458.00	44,096.00	928,744,528.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-034	Modernization	G	6/3/2010	10/6/2010	0.00	3,447,616.00	3,447,616.00	932,192,144.00
RIVERSIDE	MENIFEE UNION ELEMENTARY	50/67116-00-013	New Construction	G	6/7/2010	10/6/2010	0.00	10,932,939.00	10,932,939.00	943,125,083.00
VENTURA	RIO ELEMENTARY	50/72561-00-005	New Construction	G	6/7/2010	10/6/2010	0.00	675,147.00	675,147.00	943,800,230.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-522	Modernization	G	6/7/2010	10/6/2010	0.00	622,766.00	622,766.00	944,422,996.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-523	Modernization	G	6/7/2010	10/6/2010	0.00	745,475.00	745,475.00	945,168,471.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-524	Modernization	G	6/7/2010	10/6/2010	0.00	985,081.00	985,081.00	946,153,552.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-12-009	Modernization	G	6/7/2010	10/6/2010	0.00	3,482,089.00	3,482,089.00	949,635,641.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-033	Modernization	G	6/7/2010	10/6/2010	0.00	1,337,874.00	1,337,874.00	950,973,515.00
MERCED	MCSWAIN UNION ELEMENTARY	57/65763-00-002	Modernization	G	6/14/2010	10/6/2010	261,696.00	392,544.00	654,240.00	951,627,755.00
VENTURA	SIMI VALLEY UNIFIED	57/72603-00-020	Modernization	G	6/15/2010	10/6/2010	0.00	2,237,884.00	2,237,884.00	953,865,639.00
SAN MATEO	SEQUOIA UNION HIGH	57/69062-00-035	Modernization	G	6/16/2010	10/6/2010	0.00	705,805.00	705,805.00	954,571,444.00
COLUSA	COLUSA COUNTY OFFICE OF EDU	50/10066-00-004	New Construction	G	6/17/2010	10/6/2010	6,019,934.00	6,019,934.00	12,039,868.00	966,611,312.00
KERN	MCFARLAND UNIFIED	50/73908-00-004	New Construction	G	6/21/2010	10/6/2010	0.00	2,787,845.00	2,787,845.00	969,399,157.00
KERN	EL TEJON UNIFIED	50/75168-00-001	New Construction	G	6/21/2010	10/6/2010	0.00	2,286,102.00	2,286,102.00	971,685,259.00
LOS ANGELES	ROWLAND UNIFIED	57/73452-00-023	Modernization	G	6/21/2010	10/6/2010	0.00	2,328,797.00	2,328,797.00	974,014,056.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-042	Modernization	G	6/24/2010	10/6/2010	0.00	14,360,216.00	14,360,216.00	988,374,272.00
SAN DIEGO	SWEETWATER UNION HIGH	57/68411-00-042	Modernization	G	6/24/2010	10/6/2010	0.00	2,719,231.00	2,719,231.00	991,093,503.00
KERN	KERN HIGH	50/63529-00-008	New Construction	G	6/25/2010	10/6/2010	0.00	5,930,653.00	5,930,653.00	997,024,156.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-044	Modernization	G	6/29/2010	10/6/2010	0.00	1,481,750.00	1,481,750.00	998,505,906.00
SOLANO	SOLANO COUNTY OFFICE OF EDU	50/10488-00-028	New Construction	G	12/7/2007	11/3/2010	2,187,005.00	2,276,753.00	4,463,758.00	1,002,969,664.00

SCHOOL FACILITY PROGRAM
UNFUNDED APPROVALS
as of December 15, 2010

County	School District	Application Number	Program	Approval	Received Date	SAB Unfunded Approval	Financial Hardship Apportionment	State Share	Total Apportionment	Cumulative Amount
VENTURA	SIMI VALLEY UNIFIED	57/72603-00-018	Modernization	G	4/13/2010	11/3/2010	0.00	3,421,960.00	3,421,960.00	1,006,391,624.00
ORANGE	SANTA ANA UNIFIED	57/66670-00-045	Modernization	G	7/9/2010	11/3/2010	0.00	1,358,802.00	1,358,802.00	1,007,750,426.00
LOS ANGELES	ROWLAND UNIFIED	57/73452-00-024	Modernization	G	7/9/2010	11/3/2010	0.00	5,675,961.00	5,675,961.00	1,013,426,387.00
ORANGE	IRVINE UNIFIED	50/73650-00-015	New Construction	G	7/12/2010	11/3/2010	0.00	4,548,507.00	4,548,507.00	1,017,974,894.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-27-008	Modernization	G	7/15/2010	11/3/2010	0.00	3,026,519.00	3,026,519.00	1,021,001,413.00
SAN LUIS OBISPO	TEMPLETON UNIFIED	57/68841-00-001	Modernization	G	7/15/2010	11/3/2010	0.00	427,539.00	427,539.00	1,021,428,952.00
SAN LUIS OBISPO	TEMPLETON UNIFIED	57/68841-00-002	Modernization	G	7/15/2010	11/3/2010	0.00	1,103,391.00	1,103,391.00	1,022,532,343.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-017	Modernization	G	7/15/2010	11/3/2010	0.00	1,036,128.00	1,036,128.00	1,023,568,471.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-018	Modernization	G	7/15/2010	11/3/2010	0.00	1,006,162.00	1,006,162.00	1,024,574,633.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-019	Modernization	G	7/15/2010	11/3/2010	0.00	642,082.00	642,082.00	1,025,216,715.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-020	Modernization	G	7/15/2010	11/3/2010	0.00	736,140.00	736,140.00	1,025,952,855.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-021	Modernization	G	7/15/2010	11/3/2010	0.00	830,045.00	830,045.00	1,026,782,900.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-022	Modernization	G	7/15/2010	11/3/2010	0.00	1,090,787.00	1,090,787.00	1,027,873,687.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-023	Modernization	G	7/15/2010	11/3/2010	0.00	994,116.00	994,116.00	1,028,867,803.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-024	Modernization	G	7/15/2010	11/3/2010	0.00	927,180.00	927,180.00	1,029,794,983.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-025	Modernization	G	7/15/2010	11/3/2010	0.00	1,033,634.00	1,033,634.00	1,030,828,617.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-026	Modernization	G	7/15/2010	11/3/2010	0.00	956,080.00	956,080.00	1,031,784,697.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-027	Modernization	G	7/15/2010	11/3/2010	0.00	598,777.00	598,777.00	1,032,383,474.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-028	Modernization	G	7/15/2010	11/3/2010	0.00	618,892.00	618,892.00	1,033,002,366.00
SAN MATEO	JEFFERSON ELEMENTARY	57/68916-00-029	Modernization	G	7/15/2010	11/3/2010	0.00	1,048,432.00	1,048,432.00	1,034,050,798.00
VENTURA	RIO ELEMENTARY	57/72561-00-007	Modernization	G	7/15/2010	11/3/2010	0.00	224,316.00	224,316.00	1,034,275,114.00
SAN DIEGO	SOUTH BAY UNION ELEMENTARY	57/68395-00-005	Modernization	G	7/16/2010	11/3/2010	0.00	3,221,271.00	3,221,271.00	1,037,496,385.00
SANTA CLARA	SANTA CLARA COUNTY OFFICE C	50/10439-00-010	New Construction	G	7/23/2010	11/3/2010	2,941,030.00	3,034,025.00	5,975,055.00	1,043,471,440.00
SAN JOAQUIN	STOCKTON UNIFIED	50/68676-01-002	New Construction	G	7/23/2010	11/3/2010	0.00	814,731.00	814,731.00	1,044,286,171.00
SAN JOAQUIN	STOCKTON UNIFIED	50/68676-02-002	New Construction	G	7/23/2010	11/3/2010	0.00	747,197.00	747,197.00	1,045,033,368.00
SAN JOAQUIN	STOCKTON UNIFIED	50/68676-03-001	New Construction	G	7/23/2010	11/3/2010	0.00	747,197.00	747,197.00	1,045,780,565.00
SAN JOAQUIN	STOCKTON UNIFIED	50/68676-04-001	New Construction	G	7/23/2010	11/3/2010	0.00	935,719.00	935,719.00	1,046,716,284.00
SAN BERNARDINO	FONTANA UNIFIED	56/67710-00-002	Overcrowding Relief Grant	G	7/23/2010	11/3/2010	0.00	2,806,699.00	2,806,699.00	1,049,522,983.00
LOS ANGELES	LYNWOOD UNIFIED	57/64774-00-009	Modernization	G	7/23/2010	11/3/2010	0.00	1,267,464.00	1,267,464.00	1,050,790,447.00
SAN JOAQUIN	STOCKTON UNIFIED	57/68676-00-030	Modernization	G	7/23/2010	11/3/2010	0.00	985,689.00	985,689.00	1,051,776,136.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-526	Modernization	G	7/26/2010	11/3/2010	0.00	398,216.00	398,216.00	1,052,174,352.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-527	Modernization	G	7/26/2010	11/3/2010	0.00	457,125.00	457,125.00	1,052,631,477.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-00-528	Modernization	G	7/26/2010	11/3/2010	0.00	2,074,968.00	2,074,968.00	1,054,706,445.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-11-010	Modernization	G	7/26/2010	11/3/2010	0.00	3,004,905.00	3,004,905.00	1,057,711,350.00
LOS ANGELES	LOS ANGELES UNIFIED	57/64733-61-007	Modernization	G	7/26/2010	11/3/2010	0.00	952,987.00	952,987.00	1,058,664,337.00
LOS ANGELES	WALNUT VALLEY UNIFIED	57/73460-00-010	Modernization	G	7/27/2010	11/3/2010	0.00	2,300,422.00	2,300,422.00	1,060,964,759.00
LOS ANGELES	WALNUT VALLEY UNIFIED	57/73460-00-011	Modernization	G	7/27/2010	11/3/2010	0.00	2,455,798.00	2,455,798.00	1,063,420,557.00
SANTA CLARA	GILROY UNIFIED	50/69484-00-005	New Construction	G	7/28/2010	11/3/2010	0.00	2,189,505.00	2,189,505.00	1,065,610,062.00
STANISLAUS	NEWMAN-CROWS LANDING UNIF	50/73601-00-004	New Construction	G	7/28/2010	11/3/2010	0.00	7,411,141.00	7,411,141.00	1,073,021,203.00
SAN BERNARDINO	RIALTO UNIFIED	56/67850-00-001	Overcrowding Relief Grant	G	7/28/2010	11/3/2010	0.00	1,491,819.00	1,491,819.00	1,074,513,022.00
FRESNO	FRESNO UNIFIED	56/62166-00-002	Overcrowding Relief Grant	G	7/30/2010	11/3/2010	0.00	813,764.00	813,764.00	1,075,326,786.00
FRESNO	FRESNO UNIFIED	56/62166-00-003	Overcrowding Relief Grant	G	7/30/2010	11/3/2010	0.00	1,475,953.00	1,475,953.00	1,076,802,739.00
FRESNO	FRESNO UNIFIED	56/62166-00-004	Overcrowding Relief Grant	G	7/30/2010	11/3/2010	0.00	2,032,248.00	2,032,248.00	1,078,834,987.00
FRESNO	FRESNO UNIFIED	56/62166-00-005	Overcrowding Relief Grant	G	7/30/2010	11/3/2010	0.00	1,582,948.00	1,582,948.00	1,080,417,935.00
SAN DIEGO	SOUTH BAY UNION ELEMENTARY	57/68395-00-006	Modernization	G	7/30/2010	11/3/2010	0.00	2,495,673.00	2,495,673.00	1,082,913,608.00
SAN BERNARDINO	CHINO VALLEY UNIFIED	57/67678-00-020	Modernization	G	8/2/2010	11/3/2010	0.00	3,622,705.00	3,622,705.00	1,086,536,313.00
YUBA	MARYSVILLE JOINT UNIFIED	50/72736-00-025	New Construction	G	8/4/2010	11/3/2010	0.00	871,919.00	871,919.00	1,087,408,232.00
EL DORADO	BLACK OAK MINE UNIFIED	50/73783-00-003	New Construction	G	8/4/2010	11/3/2010	301,513.00	538,882.00	840,395.00	1,088,248,627.00
EL DORADO	BLACK OAK MINE UNIFIED	50/73783-00-004	New Construction	G	8/4/2010	11/3/2010	202,763.00	272,785.00	475,548.00	1,088,724,175.00
VENTURA	SIMI VALLEY UNIFIED	57/72603-00-021	Modernization	G	8/4/2010	11/3/2010	0.00	1,769,211.00	1,769,211.00	1,090,493,386.00
YUBA	MARYSVILLE JOINT UNIFIED	57/72736-00-017	Modernization	G	8/4/2010	11/3/2010	0.00	394,657.00	394,657.00	1,090,888,043.00
RIVERSIDE	RIVERSIDE UNIFIED	57/67215-00-033	Modernization	G	8/10/2010	11/3/2010	0.00	608,049.00	608,049.00	1,091,496,092.00
KERN	RIO BRAVO-GREELEY UNION ELE	57/73544-00-002	Modernization	G	8/10/2010	11/3/2010	0.00	2,816,960.00	2,816,960.00	1,094,313,052.00
STANISLAUS	STANISLAUS UNION ELEMENTAR	50/71282-00-002	New Construction	G	8/12/2010	11/3/2010	0.00	1,795,930.00	1,795,930.00	1,096,108,982.00
STANISLAUS	STANISLAUS UNION ELEMENTAR	57/71282-00-001	Modernization	G	8/12/2010	11/3/2010	0.00	2,808,063.00	2,808,063.00	1,098,917,045.00
LOS ANGELES	LOS ANGELES UNIFIED	50/64733-00-018	New Construction	L	3/28/2002	12/15/2010	0.00	207,219.00	207,219.00	1,099,124,264.00
LOS ANGELES	LOS ANGELES UNIFIED	50/64733-00-051	New Construction	L	6/26/2002	12/15/2010	0.00	322,166.00	322,166.00	1,099,446,430.00

INFORMATION ITEM

SCHOOL FACILITY PROGRAM
OFFICE OF PUBLIC SCHOOL CONSTRUCTION FUNDING WORKLOAD LISTING
(Applications Received Through January 13, 2011)

The New Construction and Modernization projects on this list represent completed applications awaiting the Office of Public School Construction processing and scheduling to the State Allocation Board.

This list includes future workload that is identified as:

- Pending reflects workload that has been processed by the OPSC but awaiting further information/documentation from the district.
- Reviewing reflects currently being processed by the OPSC.

This list is also available on the Internet and is updated on the first and third Fridays of each month.
www.dgs.ca.gov/opsc

OPSC Workload List
SFP APPLICATIONS
Funding - New Construction as of 1/13/11

District	County	Site Name	Application Number	50-04 Date Received	Estimated State Grant (a)	Financial Hardship (b)
Los Angeles Unified	Los Angeles	South Region High #9	53/64733-00-420	11/02/09	$89,249,426	$0
Dos Palos Oro Loma Joint Unified	Merced	Dos Palos High	51/75317-00-02	10/26/10	$2,135,222	$0
Black Oak Mine Unified	El Dorado	Northside Elementary	50/73783-00-05	11/08/10	$42,687	$42,687
Los Angeles Unified	Los Angeles	Vaughn Elementary Language Academy	54/64733-00-13	11/10/10	$5,581,073	$0
Hemet Unified	Riverside	Hemet High	50/67082-00-16	11/12/10	$12,974,572	$0
John Swett Unified	Contra Costa	John Swett High	50/61697-00-02	11/15/10	$4,207,656	$0
Raisin City Elementary	Fresno	Raisin City Elementary	50/62380-00-01	11/29/10	$426,667	$426,667
John Swett Unified	Contra Costa	Willow High	50/61697-00-03	12/08/10	$474,892	$0
John Swett Unified	Contra Costa	John Swett High	50/61697-00-04	12/09/10	$801,178	$0
Visalia Unified	Tulare	Shannon Ranch	50/72256-00-26	12/22/10	$7,950,097	$0
Washington Colony Elementary	Fresno	Washington Colony Elementary	50/62513-00-01	12/22/10	$125,837	$125,837
College Elementary	Santa Barbara	College Es/Santa Ynez Valley Charter	54/69179-00-02	01/04/11	$8,000	$0
Oak Valley Union Elementary	Tulare	Oak Valley Elementary	50/72017-00-03	01/07/11	$379,594	$379,594
				NEW CONSTRUCTION FUNDING SUB-TOTALS	**$29,518,402**	**$974,785**
				NEW CONSTRUCTION FUNDING TOTAL	**$30,493,187**	
				CRITICALLY OVERCROWDED SCHOOLS FUNDING TOTAL	**$89,249,426**	
				CHARTER FUNDING TOTAL	**$5,589,073**	**$0**

(a) Represents estimated 50% state share of project including excessive cost grants. Amounts shown have not been reviewed by the OPSC for compliance with all School Facility Program requirements.

(b) Represents estimated financial hardship. Amounts shown have not been reviewed by the OPSC for compliance with all School Facility Program requirements.

OPSC Workload List
SFP APPLICATIONS
Funding - Modernization as of 1/13/11

District	County	Site Name	Application Number	50-04 Date Received	Estimated State Grant (a)	Financial Hardship (b)
Black Oak Mine Unified	El Dorado	Georgetown Elementary	57/73783-00-07	11/08/10	$43,430	$28,954
Black Oak Mine Unified	El Dorado	Golden Sierra High	57/73783-00-05	11/08/10	$56,666	$37,777
Black Oak Mine Unified	El Dorado	Northside Elementary	57/73783-00-06	11/08/10	$187,258	$124,838
Julian Union Elementary	San Diego	Julian Junior High	57/68163-00-02	11/09/10	$406,051	$0
Calexico Unified	Imperial	Jefferson Elementary	57/63099-00-04	11/10/10	$2,149,833	$0
Hemet Unified	Riverside	Hemet High	57/67082-00-10	11/12/10	$2,285,735	$0
San Juan Unified	Sacramento	Mesa Verde High Yr	57/67447-00-57	11/12/10	$6,329,788	$0
Simi Valley Unified	Ventura	Berylwood Elementary	57/72603-00-22	11/12/10	$2,280,139	$0
Desert Sands Unified	Riverside	Amistad High	57/67058-00-14	11/18/10	$2,464,073	$0
Farmersville Unified	Tulare	Snowden (George L.) Elementary	57/75325-00-03	11/18/10	$613,105	$408,737
Twin Rivers Unified	Sacramento	Frontier Elementary	57/76505-00-40	11/19/10	$1,376,558	$0
Twin Rivers Unified	Sacramento	Hillsdale Elementary	57/76505-00-39	11/19/10	$1,332,258	$0
Twin Rivers Unified	Sacramento	Sierra View Elementary	57/76505-00-38	11/19/10	$1,276,694	$0
East Side Union High	Santa Clara	Santa Teresa High	57/69427-00-27	11/23/10	$845,060	$0
Raisin City Elementary	Fresno	Raisin City Elementary	57/62380-00-01	11/29/10	$89,136	$59,424
Black Oak Mine Unified	El Dorado	American River Charter	57/73783-00-09	11/30/10	$31,824	$21,216
Black Oak Mine Unified	El Dorado	Divide High	57/73783-00-08	11/30/10	$21,423	$14,282
Santa Ana Unified	Orange	Santiago Elementary	57/66670-00-47	11/30/10	$2,285,387	$0
William S. Hart Union High	Los Angeles	Sierra Vista Junior High	57/65136-00-08	12/02/10	$5,037,152	$0
Farmersville Unified	Tulare	Deep Creek Academy	57/75325-00-02	12/06/10	$410,736	$273,824
San Francisco Unified	San Francisco	Sunnyside Elementary	57/68478-00-35	12/09/10	$2,286,338	$0
Farmersville Unified	Tulare	Farmersville Junior High	57/75325-00-01	12/13/10	$1,316,645	$877,763
Fresno Unified	Fresno	Ayer Elementary	57/62166-00-127	12/14/10	$2,309,585	$0
Fresno Unified	Fresno	Forkner Elementary	57/62166-00-128	12/14/10	$1,480,679	$0
Fresno Unified	Fresno	Lawless Elementary	57/62166-00-126	12/14/10	$2,519,419	$0
Fresno Unified	Fresno	Tehipite Middle	57/62166-00-125	12/14/10	$3,121,037	$0
San Gabriel Unified	Los Angeles	Del Mar High	57/75291-00-06	12/15/10	$441,905	$0
Santa Ana Unified	Orange	Harvey (Carl)	57/66670-00-48	12/20/10	$1,534,060	$0
Santa Ana Unified	Orange	Willard Intermediate	57/66670-00-49	12/22/10	$2,044,554	$0
Fort Sage Unified	Lassen	Herlong High	58/75036-00-01	12/30/10	$416,739	$0
Morongo Unified	San Bernardino	Yucca Valley High	57/67777-00-05	12/31/10	$1,906,979	$0
Morongo Unified	San Bernardino	Palm Vista Elementary	57/67777-00-06	01/05/11	$1,272,182	$0
Oceanside City Unified	San Diego	Libby Elementary	57/73569-00-10	01/06/11	$2,743,548	$0
Santa Ana Unified	Orange	Edison Elementary	57/66670-00-50	01/06/11	$1,799,978	$0
Albany Unified	Alameda	Albany High	57/61127-00-06	01/07/11	$2,164,828	$0
Patterson Joint Unified	Stanislaus	Patterson High	57/71217-00-10	01/10/11	$4,192,111	$2,794,741
		MODERNIZATION FUNDING SUBTOTALS			**$61,072,891**	**$4,641,556**
		TOTAL MODERNIZATION FUNDING			**$65,714,447**	

(a) Represents estimated 50% state share of project including excessive cost grants. Amounts shown have not been reviewed by the OPSC for compliance with all School Facility Program requirements.

(b) Represents estimated financial hardship. Amounts shown have not been reviewed by the OPSC for compliance with all School Facility Program requirements.

INFORMATION ITEM

EMERGENCY REPAIR PROGRAM UNFUNDED LIST

(State Allocation Board unfunded approvals as of December 15, 2010)

The Emergency Repair Program applications on this list have
received an "unfunded" approval by the State Allocation Board (SAB).
Note that an "unfunded" approval does not guarantee a future apportionment by the SAB.

Published monthly in the SAB Agenda.

This report is also on the OPSC Website at:
www.dgs.ca.gov/opsc

EMERGENCY REPAIR PROGRAM
UNFUNDED APPROVALS as of December 15, 2010

District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
OAKLAND UNIFIED	ALAMEDA	Oakland Senior High	61/61259-00-0041	Grant	2/22/2008	9/23/2009	$ 6,465,744
OXNARD UNION HIGH	VENTURA	Hueneme High	61/72546-00-0002	Reimbursement	2/22/2008	9/23/2009	$ 6,010
OXNARD UNION HIGH	VENTURA	Hueneme High	61/72546-00-0003	Reimbursement	2/22/2008	9/23/2009	$ 10,327
OXNARD UNION HIGH	VENTURA	Channel Islands High	61/72546-00-0004	Reimbursement	2/22/2008	9/23/2009	$ 20,706
KINGS CANYON JOINT UNIFIED	FRESNO	Reedley High	61/62265-00-0003	Reimbursement	2/25/2008	9/23/2009	$ 374,034
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0094	Grant	2/25/2008	9/23/2009	$ 9,564
SAN DIEGO UNIFIED	SAN DIEGO	School of Science, Connections and	61/68338-00-0250	Reimbursement	2/25/2008	9/23/2009	$ 23,448
SAN DIEGO UNIFIED	SAN DIEGO	School of Digital Media & Design at Kearn	61/68338-00-0251	Reimbursement	2/25/2008	9/23/2009	$ 22,527
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0003	Reimbursement	2/25/2008	9/23/2009	$ 4,638
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0004	Grant	2/25/2008	9/23/2009	$ 18,351
CHICO UNIFIED	BUTTE	Citrus Avenue Elementary	61/61424-00-0030	Reimbursement	2/26/2008	11/4/2009	$ 5,163
RAISIN CITY ELEMENTARY	FRESNO	Raisin City Elementary	61/62380-00-0002	Grant	2/26/2008	11/4/2009	$ 38,776
RAISIN CITY ELEMENTARY	FRESNO	Raisin City Elementary	61/62380-00-0003	Reimbursement	2/26/2008	11/4/2009	$ 12,852
RAISIN CITY ELEMENTARY	FRESNO	Raisin City Elementary	61/62380-00-0004	Reimbursement	2/26/2008	11/4/2009	$ 8,265
LAKESIDE UNION SCHOOL	KERN	Lakeside Elementary	61/63552-00-0001	Grant	2/26/2008	11/4/2009	$ 488,801
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0004	Grant	2/26/2008	11/4/2009	$ 1,046,443
ESCONDIDO UNION ELEMENTARY	SAN DIEGO	Grant Middle	61/68098-00-0014	Grant	2/26/2008	11/4/2009	$ 1,979,191
EMERY UNIFIED	ALAMEDA	Emery Secondary	61/61168-00-0002	Reimbursement	2/27/2008	11/4/2009	$ 45,238
ORANGE UNIFIED	ORANGE	California Elementary	61/66621-00-0033	Grant Adjustment	2/27/2008	11/4/2009	$ 1,046
ORANGE UNIFIED	ORANGE	Portola Middle	61/66621-00-0063	Grant	2/27/2008	11/4/2009	$ 10,543
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0099	Reimbursement	2/28/2008	11/4/2009	$ 170,975
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0100	Reimbursement	2/28/2008	11/4/2009	$ 485
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0102	Reimbursement	2/28/2008	11/4/2009	$ 14,665
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0103	Reimbursement	2/28/2008	11/4/2009	$ 23,840
ARENA UNION ELEMENTARY	MENDOCINO	Arena Elementary	61/65557-00-0005	Grant Adjustment	2/28/2008	11/4/2009	$ 897
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0005	Grant	2/28/2008	11/4/2009	$ 203,789
MORENO VALLEY UNIFIED	RIVERSIDE	Landmark Middle	61/67124-00-0006	Grant	2/28/2008	11/4/2009	$ 228,875
MORENO VALLEY UNIFIED	RIVERSIDE	Honey Hollow Elementary	61/67124-00-0007	Grant	2/28/2008	11/4/2009	$ 189,822
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Elementary	61/67124-00-0008	Grant	2/28/2008	11/4/2009	$ 243,875
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0009	Grant	2/28/2008	11/4/2009	$ 216,282
PALO VERDE UNIFIED	RIVERSIDE	Palo Verde High	61/67181-00-0011	Grant	2/28/2008	11/4/2009	$ 365,000
SAN DIEGO UNIFIED	SAN DIEGO	Kroc Middle	61/68338-00-0252	Reimbursement	2/28/2008	11/4/2009	$ 12,943
SAN DIEGO UNIFIED	SAN DIEGO	Kroc Middle	61/68338-00-0253	Reimbursement	2/28/2008	11/4/2009	$ 12,515
FRESNO UNIFIED	FRESNO	Del Mar Elementary	61/62166-00-0701	Grant	2/29/2008	11/4/2009	$ 124,823
PASADENA UNIFIED	LOS ANGELES	Wilson Middle	61/64881-00-0027	Grant	2/29/2008	11/4/2009	$ 23,520
PASADENA UNIFIED	LOS ANGELES	Muir High	61/64881-00-0028	Grant	3/3/2008	11/4/2009	$ 7,091
PASADENA UNIFIED	LOS ANGELES	Blair High	61/64881-00-0029	Grant	3/3/2008	11/4/2009	$ 2,972
PASADENA UNIFIED	LOS ANGELES	Jackson Elementary	61/64881-00-0030	Grant	3/3/2008	11/4/2009	$ 29,899
PASADENA UNIFIED	LOS ANGELES	Muir High	61/64881-00-0031	Grant	3/3/2008	11/4/2009	$ 145,787
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0017	Grant	3/3/2008	1/27/2010	$ 30,278
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0018	Grant	3/3/2008	1/27/2010	$ 106,811
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0019	Grant	3/3/2008	2/24/2010	$ 46,137
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0020	Grant	3/3/2008	11/4/2009	$ 89,467
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0021	Grant	3/3/2008	11/4/2009	$ 529,853
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0022	Grant	3/3/2008	1/27/2010	$ 3,282,007

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SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0023	Grant	3/3/2008	1/27/2010	$ 965,957
SANTA ANA UNIFIED	ORANGE	Santa Ana High	61/66670-00-0024	Grant	3/3/2008	1/27/2010	$ 4,665,825
SANTA ANA UNIFIED	ORANGE	Santa Ana High	61/66670-00-0025	Grant	3/3/2008	1/27/2010	$ 1,196,171
SANTA ANA UNIFIED	ORANGE	Adams Elementary	61/66670-00-0026	Grant	3/3/2008	1/27/2010	$ 169,527
SANTA ANA UNIFIED	ORANGE	Wilson Elementary	61/66670-00-0027	Grant	3/3/2008	1/27/2010	$ 1,798,250
SANTA ANA UNIFIED	ORANGE	Garfield Elementary	61/66670-00-0028	Grant	3/3/2008	1/27/2010	$ 269,915
SANTA ANA UNIFIED	ORANGE	Jackson (Andrew) Elementary	61/66670-00-0029	Grant	3/3/2008	11/4/2009	$ 575,559
ALVORD UNIFIED	RIVERSIDE	Norte Vista High	61/66977-00-0240	Grant	3/3/2008	11/4/2009	$ 14,685
ALVORD UNIFIED	RIVERSIDE	Norte Vista High	61/66977-00-0241	Reimbursement	3/3/2008	11/4/2009	$ 12,210
ALVORD UNIFIED	RIVERSIDE	Wells Intermediate	61/66977-00-0242	Reimbursement	3/3/2008	11/4/2009	$ 6,307
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0115	Grant	3/3/2008	1/27/2010	$ 5,958,071
SAN DIEGO UNIFIED	SAN DIEGO	Kimbrough (Jack) Elementary	61/68338-00-0244	Reimbursement	3/3/2008	11/4/2009	$ 7,165
SAN DIEGO UNIFIED	SAN DIEGO	Kimbrough (Jack) Elementary	61/68338-00-0245	Reimbursement	3/3/2008	11/4/2009	$ 10,973
SAN DIEGO UNIFIED	SAN DIEGO	Linda Vista Elementary	61/68338-00-0314	Reimbursement	3/3/2008	11/4/2009	$ 7,432
SANTA ANA UNIFIED	ORANGE	Fremont Elementary	61/66670-00-0030	Grant	3/4/2008	1/27/2010	$ 3,126,553
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0031	Grant	3/4/2008	1/27/2010	$ 175,886
SANTA ANA UNIFIED	ORANGE	Spurgeon Intermediate	61/66670-00-0032	Grant	3/4/2008	1/27/2010	$ 128,025
SANTA ANA UNIFIED	ORANGE	Spurgeon Intermediate	61/66670-00-0033	Grant	3/4/2008	1/27/2010	$ 489,078
SANTA ANA UNIFIED	ORANGE	Willard Intermediate	61/66670-00-0034	Grant	3/4/2008	1/27/2010	$ 44,771
SANTA ANA UNIFIED	ORANGE	Willard Intermediate	61/66670-00-0035	Grant	3/4/2008	1/27/2010	$ 240,207
ALVORD UNIFIED	RIVERSIDE	Norte Vista High	61/66977-00-0239	Reimbursement	3/4/2008	11/4/2009	$ 11,982
CORCORAN JOINT UNIFIED	KINGS	Mark Twain Elementary	61/63891-00-0012	Grant	3/5/2008	2/24/2010	$ 48,920
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0023	Grant	3/5/2008	2/24/2010	$ 127,011
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Cahuilla Desert Academy (Jr. High)	61/73676-00-0080	Reimbursement	3/5/2008	11/4/2009	$ 6,185
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Coachella Valley High	61/73676-00-0081	Reimbursement	3/5/2008	11/4/2009	$ 12,611
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Coachella Valley High	61/73676-00-0082	Reimbursement	3/5/2008	11/4/2009	$ 12,611
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Coachella Valley High	61/73676-00-0083	Grant	3/5/2008	11/4/2009	$ 17,192
PORTERVILLE UNIFIED	TULARE	Granite Hills High	61/75523-00-0001	Grant	3/5/2008	2/24/2010	$ 180,742
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0116	Reimbursement	3/6/2008	11/4/2009	$ 100,476
KINGS CANYON JOINT UNIFIED	FRESNO	Sheridan Elementary	61/62265-00-0031	Reimbursement	3/7/2008	1/27/2010	$ 24,952
CORCORAN JOINT UNIFIED	KINGS	Corcoran High	61/63891-00-0011	Grant	3/7/2008	2/24/2010	$ 390,243
LONG BEACH UNIFIED	LOS ANGELES	Renaissance High School for the Arts	61/64725-00-0037	Reimbursement	3/7/2008	11/4/2009	$ 6,402
LYNWOOD UNIFIED	LOS ANGELES	Roosevelt Elementary	61/64774-00-0020	Grant	3/7/2008	11/4/2009	$ 205,553
SALINAS CITY ELEMENTARY	MONTEREY	Sherwood Elementary	61/66142-00-0014	Grant	3/7/2008	11/4/2009	$ 477,830
SACRAMENTO CITY UNIFIED	SACRAMENTO	Kemble (Edward) Elementary	61/67439-00-0095	Grant	3/7/2008	2/24/2010	$ 732,432
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0096	Grant	3/7/2008	11/4/2009	$ 5,556
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0097	Grant	3/7/2008	11/4/2009	$ 313,803
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0098	Grant	3/7/2008	1/27/2010	$ 396,740
SACRAMENTO CITY UNIFIED	SACRAMENTO	Rosa Parks (formerly Goethe (Charles M.)) M	61/67439-00-0099	Grant	3/7/2008	3/24/2010	$ 114,910
SAN DIEGO UNIFIED	SAN DIEGO	Madison Senior High	61/68338-00-0246	Reimbursement	3/7/2008	11/4/2009	$ 38,513
SAN DIEGO UNIFIED	SAN DIEGO	Madison Senior High	61/68338-00-0247	Reimbursement	3/7/2008	11/4/2009	$ 40,993
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Mountain Vista Elementary	61/73676-00-0077	Reimbursement	3/7/2008	11/4/2009	$ 4,337
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Valley View Elementary	61/73676-00-0078	Grant	3/7/2008	2/24/2010	$ 62,204
ANTIOCH UNIFIED	CONTRA COSTA	Fremont Elementary	61/61648-00-0020	Reimbursement	3/10/2008	2/24/2010	$ 7,018
ANTIOCH UNIFIED	CONTRA COSTA	Turner Elementary	61/61648-00-0021	Reimbursement	3/10/2008	2/24/2010	$ 8,501

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ANTIOCH UNIFIED	CONTRA COSTA	Antioch Middle	61/61648-00-0022	Reimbursement	3/10/2008	2/24/2010	$ 28,628
ANTIOCH UNIFIED	CONTRA COSTA	Antioch High	61/61648-00-0023	Reimbursement	3/10/2008	2/24/2010	$ 104,804
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0105	Reimbursement	3/10/2008	11/4/2009	$ 7,750
ORANGE UNIFIED	ORANGE	Fairhaven Elementary	61/66621-00-0022	Grant Adjustment	3/10/2008	11/4/2009	$ 992
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wood (Will C.) Middle	61/67439-00-0100	Grant	3/10/2008	3/24/2010	$ 141,327
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0101	Grant	3/10/2008	1/27/2010	$ 537,231
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0102	Grant	3/10/2008	1/27/2010	$ 517,293
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Sunnyslope Elementary	61/68395-00-0069	Grant	3/10/2008	1/27/2010	$ 25,700
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Nestor Elementary	61/68395-00-0070	Grant	3/10/2008	1/27/2010	$ 68,533
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Nicoloff (George) Elementary	61/68395-00-0071	Grant	3/10/2008	1/27/2010	$ 68,533
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Central Elementary	61/68395-00-0072	Grant	3/10/2008	1/27/2010	$ 34,267
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Berry (Godfrey G.) Elementary	61/68395-00-0073	Grant	3/10/2008	1/27/2010	$ 25,700
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Bayside Elementary	61/68395-00-0074	Grant	3/10/2008	1/27/2010	$ 34,267
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Pence (Howard) Elementary	61/68395-00-0075	Grant	3/10/2008	1/27/2010	$ 17,133
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0002	Grant	3/10/2008	1/27/2010	$ 784,061
PITTSBURG UNIFIED	CONTRA COSTA	Foothill Elementary	61/61788-00-0104	Reimbursement	3/11/2008	2/24/2010	$ 2,714
PASADENA UNIFIED	LOS ANGELES	Eliot Middle	61/64881-00-0032	Grant	3/11/2008	2/24/2010	$ 216,233
PASADENA UNIFIED	LOS ANGELES	Washington Middle	61/64881-00-0033	Grant	3/11/2008	2/24/2010	$ 75,406
PASADENA UNIFIED	LOS ANGELES	Loma Alta Elementary	61/64881-00-0034	Grant	3/11/2008	2/24/2010	$ 88,353
PASADENA UNIFIED	LOS ANGELES	Loma Alta Elementary	61/64881-00-0035	Grant	3/11/2008	2/24/2010	$ 3,106
WEST PARK ELEMENTARY	FRESNO	West Park Elementary	61/62539-00-0003	Reimbursement	3/12/2008	1/27/2010	$ 21,993
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0006	Grant	3/12/2008	1/27/2010	$ 87,911
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0007	Reimbursement	3/12/2008	1/27/2010	$ 9,781
ORANGE UNIFIED	ORANGE	Fairhaven Elementary	61/66621-00-0064	Reimbursement	3/13/2008	1/27/2010	$ 13,319
ORANGE UNIFIED	ORANGE	Sycamore Elementary	61/66621-00-0065	Reimbursement	3/13/2008	1/27/2010	$ 13,988
SANTA ANA UNIFIED	ORANGE	Hoover Elementary	61/66670-00-0036	Grant	3/13/2008	1/27/2010	$ 1,975,349
SANTA ANA UNIFIED	ORANGE	Hoover Elementary	61/66670-00-0037	Grant	3/13/2008	1/27/2010	$ 203,648
SANTA ANA UNIFIED	ORANGE	Santa Ana High	61/66670-00-0038	Grant	3/13/2008	1/27/2010	$ 711,137
SANTA ANA UNIFIED	ORANGE	Edison (Thomas A.) Elementary	61/66670-00-0039	Grant	3/13/2008	1/27/2010	$ 171,243
SANTA ANA UNIFIED	ORANGE	Monte Vista Elementary	61/66670-00-0040	Grant	3/13/2008	1/27/2010	$ 591,369
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0041	Grant	3/13/2008	3/24/2010	$ 878,749
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0043	Grant	3/13/2008	3/24/2010	$ 7,986,332
ROWLAND UNIFIED	LOS ANGELES	La Seda Elementary	61/73452-00-0001	Reimbursement	3/13/2008	3/24/2010	$ 270,030
ROWLAND UNIFIED	LOS ANGELES	Villacorta Elementary	61/73452-00-0002	Grant	3/13/2008	5/26/2010	$ 1,346,625
GOLDEN PLAINS UNIFIED	FRESNO	Tranquillity Elementary	61/75234-00-0025	Grant	3/13/2008	3/24/2010	$ 485,520
LOS ANGELES UNIFIED	LOS ANGELES	Lincoln (Abraham) Senior High	61/64733-00-3784	Reimbursement	3/14/2008	3/24/2010	$ 22,469
LOS ANGELES UNIFIED	LOS ANGELES	Locke (Alain Leroy) Senior High	61/64733-00-3785	Reimbursement	3/14/2008	3/24/2010	$ 79,575
LOS ANGELES UNIFIED	LOS ANGELES	Hamilton (Alexander) Senior High	61/64733-00-3786	Reimbursement	3/14/2008	3/24/2010	$ 44,261
LOS ANGELES UNIFIED	LOS ANGELES	Alexandria Avenue Elementary	61/64733-00-3787	Reimbursement	3/14/2008	3/24/2010	$ 11,865
LOS ANGELES UNIFIED	LOS ANGELES	Carnegie (Andrew) Middle	61/64733-00-3788	Reimbursement	3/14/2008	3/24/2010	$ 22,419
LOS ANGELES UNIFIED	LOS ANGELES	Angeles Mesa Elementary	61/64733-00-3789	Reimbursement	3/14/2008	3/24/2010	$ 9,346
LOS ANGELES UNIFIED	LOS ANGELES	Arminta Street Elementary	61/64733-00-3790	Reimbursement	3/14/2008	3/24/2010	$ 5,275
LOS ANGELES UNIFIED	LOS ANGELES	Ascot Avenue Elementary	61/64733-00-3791	Reimbursement	3/14/2008	3/24/2010	$ 8,401
LOS ANGELES UNIFIED	LOS ANGELES	Audubon Middle	61/64733-00-3792	Reimbursement	3/14/2008	3/24/2010	$ 35,708
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-3793	Reimbursement	3/14/2008	3/24/2010	$ 22,150

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LOS ANGELES UNIFIED	LOS ANGELES	Belmont Senior High	61/64733-00-3794	Reimbursement	3/14/2008	3/24/2010	$ 56,760
LOS ANGELES UNIFIED	LOS ANGELES	Belvedere Middle	61/64733-00-3795	Reimbursement	3/14/2008	3/24/2010	$ 6,831
LOS ANGELES UNIFIED	LOS ANGELES	Franklin (Benjamin) Senior High	61/64733-00-3796	Reimbursement	3/14/2008	3/24/2010	$ 63,058
LOS ANGELES UNIFIED	LOS ANGELES	Berendo Middle	61/64733-00-3797	Reimbursement	3/14/2008	3/24/2010	$ 30,765
LOS ANGELES UNIFIED	LOS ANGELES	Bright (Birdielee V.) Elementary	61/64733-00-3798	Reimbursement	3/14/2008	3/24/2010	$ 12,028
LOS ANGELES UNIFIED	LOS ANGELES	Birmingham Senior High	61/64733-00-3799	Reimbursement	3/14/2008	3/24/2010	$ 17,428
LOS ANGELES UNIFIED	LOS ANGELES	Blythe Street Elementary	61/64733-00-3800	Reimbursement	3/14/2008	3/24/2010	$ 10,632
LOS ANGELES UNIFIED	LOS ANGELES	Breed Street Elementary	61/64733-00-3801	Reimbursement	3/14/2008	3/24/2010	$ 5,747
LOS ANGELES UNIFIED	LOS ANGELES	Brooklyn Avenue Elementary	61/64733-00-3802	Reimbursement	3/14/2008	3/24/2010	$ 6,237
LOS ANGELES UNIFIED	LOS ANGELES	Budlong Avenue Elementary	61/64733-00-3803	Reimbursement	3/14/2008	3/24/2010	$ 20,135
LOS ANGELES UNIFIED	LOS ANGELES	Burton Street Elementary	61/64733-00-3804	Reimbursement	3/14/2008	3/24/2010	$ 7,620
LOS ANGELES UNIFIED	LOS ANGELES	Bushnell Way Elementary	61/64733-00-3805	Reimbursement	3/14/2008	3/24/2010	$ 8,799
LOS ANGELES UNIFIED	LOS ANGELES	Camellia Avenue Elementary	61/64733-00-3806	Reimbursement	3/14/2008	3/24/2010	$ 5,921
LOS ANGELES UNIFIED	LOS ANGELES	Canoga Park Elementary	61/64733-00-3807	Reimbursement	3/14/2008	3/24/2010	$ 11,195
LOS ANGELES UNIFIED	LOS ANGELES	Canoga Park Senior High	61/64733-00-3808	Reimbursement	3/14/2008	3/24/2010	$ 14,430
LOS ANGELES UNIFIED	LOS ANGELES	Carson Senior High	61/64733-00-3809	Reimbursement	3/14/2008	3/24/2010	$ 5,913
LOS ANGELES UNIFIED	LOS ANGELES	Drew (Charles) Middle	61/64733-00-3810	Reimbursement	3/14/2008	3/24/2010	$ 36,839
LOS ANGELES UNIFIED	LOS ANGELES	Maclay (Charles) Middle	61/64733-00-3811	Reimbursement	3/14/2008	3/24/2010	$ 39,043
LOS ANGELES UNIFIED	LOS ANGELES	Chase Street Elementary	61/64733-00-3812	Reimbursement	3/14/2008	3/24/2010	$ 13,725
LOS ANGELES UNIFIED	LOS ANGELES	Chester W. Nimitz Middle	61/64733-00-3813	Reimbursement	3/14/2008	3/24/2010	$ 32,304
LOS ANGELES UNIFIED	LOS ANGELES	Columbus (Christopher) Middle	61/64733-00-3814	Reimbursement	3/14/2008	3/24/2010	$ 8,401
LOS ANGELES UNIFIED	LOS ANGELES	Cienega Elementary	61/64733-00-3815	Reimbursement	3/14/2008	3/24/2010	$ 12,452
LOS ANGELES UNIFIED	LOS ANGELES	Columbus Avenue	61/64733-00-3816	Reimbursement	3/14/2008	3/24/2010	$ 5,217
LOS ANGELES UNIFIED	LOS ANGELES	Crenshaw Senior High	61/64733-00-3817	Reimbursement	3/14/2008	3/24/2010	$ 58,096
LOS ANGELES UNIFIED	LOS ANGELES	Webster (Daniel) Middle	61/64733-00-3818	Reimbursement	3/14/2008	3/24/2010	$ 11,980
LOS ANGELES UNIFIED	LOS ANGELES	Jordan (David Starr) Senior High	61/64733-00-3819	Reimbursement	3/14/2008	3/24/2010	$ 7,000
LOS ANGELES UNIFIED	LOS ANGELES	Griffith (David Wark) Middle	61/64733-00-3820	Reimbursement	3/14/2008	3/24/2010	$ 12,000
LOS ANGELES UNIFIED	LOS ANGELES	Dayton Heights Elementary	61/64733-00-3821	Reimbursement	3/14/2008	3/24/2010	$ 4,251
LOS ANGELES UNIFIED	LOS ANGELES	Eastman Avenue Elementary	61/64733-00-3822	Reimbursement	3/14/2008	3/24/2010	$ 7,029
LOS ANGELES UNIFIED	LOS ANGELES	Markham (Edwin) Middle	61/64733-00-3823	Reimbursement	3/14/2008	3/24/2010	$ 20,079
LOS ANGELES UNIFIED	LOS ANGELES	El Sereno Middle	61/64733-00-3824	Reimbursement	3/14/2008	3/24/2010	$ 11,460
LOS ANGELES UNIFIED	LOS ANGELES	Elizabeth Learning Center	61/64733-00-3825	Reimbursement	3/14/2008	3/24/2010	$ 23,185
LOS ANGELES UNIFIED	LOS ANGELES	Bell 3 Span	61/64733-00-3826	Reimbursement	3/14/2008	3/24/2010	$ 6,407
LOS ANGELES UNIFIED	LOS ANGELES	Esperanza Elementary	61/64733-00-3827	Reimbursement	3/14/2008	3/24/2010	$ 6,691
LOS ANGELES UNIFIED	LOS ANGELES	Gratts (Evelyn Thurman) Elem	61/64733-00-3828	Reimbursement	3/14/2008	3/24/2010	$ 10,124
LOS ANGELES UNIFIED	LOS ANGELES	Fairfax Senior High	61/64733-00-3829	Reimbursement	3/14/2008	3/24/2010	$ 30,427
LOS ANGELES UNIFIED	LOS ANGELES	Fernangeles Elementary	61/64733-00-3830	Reimbursement	3/14/2008	3/24/2010	$ 15,203
LOS ANGELES UNIFIED	LOS ANGELES	Fifty-Ninth Street Elementary	61/64733-00-3831	Reimbursement	3/14/2008	3/24/2010	$ 8,311
LOS ANGELES UNIFIED	LOS ANGELES	Fifty-Second Street Elementary	61/64733-00-3832	Reimbursement	3/14/2008	3/24/2010	$ 17,927
LOS ANGELES UNIFIED	LOS ANGELES	Figueroa Street Elementary	61/64733-00-3833	Reimbursement	3/14/2008	3/24/2010	$ 14,408
LOS ANGELES UNIFIED	LOS ANGELES	First Street Elementary	61/64733-00-3834	Reimbursement	3/14/2008	3/24/2010	$ 14,989
LOS ANGELES UNIFIED	LOS ANGELES	Fletcher Drive Elementary	61/64733-00-3835	Reimbursement	3/14/2008	3/24/2010	$ 16,254
LOS ANGELES UNIFIED	LOS ANGELES	Griffith Joyner (Florence) Element	61/64733-00-3836	Reimbursement	3/14/2008	3/24/2010	$ 10,726
LOS ANGELES UNIFIED	LOS ANGELES	Nightingale (Florence) Middle	61/64733-00-3837	Reimbursement	3/14/2008	3/24/2010	$ 6,864
LOS ANGELES UNIFIED	LOS ANGELES	Ford Boulevard Elementary	61/64733-00-3838	Reimbursement	3/14/2008	3/24/2010	$ 14,438

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District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
LOS ANGELES UNIFIED	LOS ANGELES	Forty-Ninth Street Elementary	61/64733-00-3839	Reimbursement	3/14/2008	3/24/2010	$ 26,727
LOS ANGELES UNIFIED	LOS ANGELES	Foshay Learning Center	61/64733-00-3840	Reimbursement	3/14/2008	3/24/2010	$ 14,112
LOS ANGELES UNIFIED	LOS ANGELES	Fries Avenue Elementary	61/64733-00-3841	Reimbursement	3/14/2008	3/24/2010	$ 4,697
LOS ANGELES UNIFIED	LOS ANGELES	Gardena Senior High	61/64733-00-3842	Reimbursement	3/14/2008	3/24/2010	$ 13,751
LOS ANGELES UNIFIED	LOS ANGELES	Carver (George Washington) Middle	61/64733-00-3843	Reimbursement	3/14/2008	3/24/2010	$ 22,288
LOS ANGELES UNIFIED	LOS ANGELES	Washington (George) Preparatory High	61/64733-00-3844	Reimbursement	3/14/2008	3/24/2010	$ 57,425
LOS ANGELES UNIFIED	LOS ANGELES	Curtiss (Glenn Hammond) Middle	61/64733-00-3845	Reimbursement	3/14/2008	3/24/2010	$ 8,631
LOS ANGELES UNIFIED	LOS ANGELES	Graham Elementary	61/64733-00-3846	Reimbursement	3/14/2008	3/24/2010	$ 22,455
LOS ANGELES UNIFIED	LOS ANGELES	Grand View Boulevard Elementary	61/64733-00-3847	Reimbursement	3/14/2008	3/24/2010	$ 10,513
LOS ANGELES UNIFIED	LOS ANGELES	Grant Elementary	61/64733-00-3848	Reimbursement	3/14/2008	3/24/2010	$ 10,562
LOS ANGELES UNIFIED	LOS ANGELES	Grape Street Elementary	61/64733-00-3849	Reimbursement	3/14/2008	3/24/2010	$ 17,157
LOS ANGELES UNIFIED	LOS ANGELES	Gridley Street Elementary	61/64733-00-3850	Reimbursement	3/14/2008	3/24/2010	$ 7,882
LOS ANGELES UNIFIED	LOS ANGELES	Haddon Avenue Elementary	61/64733-00-3851	Reimbursement	3/14/2008	3/24/2010	$ 10,260
LOS ANGELES UNIFIED	LOS ANGELES	Hammel Street Elementary	61/64733-00-3852	Reimbursement	3/14/2008	3/24/2010	$ 9,881
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson New Elementary School 2	61/64733-00-3853	Reimbursement	3/14/2008	3/24/2010	$ 10,273
LOS ANGELES UNIFIED	LOS ANGELES	Hawaiian Avenue Elementary	61/64733-00-3854	Reimbursement	3/14/2008	3/24/2010	$ 4,753
LOS ANGELES UNIFIED	LOS ANGELES	Hazeltine Avenue Elementary	61/64733-00-3855	Reimbursement	3/14/2008	3/24/2010	$ 6,267
LOS ANGELES UNIFIED	LOS ANGELES	Heliotrope Avenue Elementary	61/64733-00-3856	Reimbursement	3/14/2008	3/24/2010	$ 9,177
LOS ANGELES UNIFIED	LOS ANGELES	Clay (Henry) Middle	61/64733-00-3857	Reimbursement	3/14/2008	3/24/2010	$ 24,754
LOS ANGELES UNIFIED	LOS ANGELES	Gage (Henry T.) Middle	61/64733-00-3858	Reimbursement	3/14/2008	3/24/2010	$ 9,652
LOS ANGELES UNIFIED	LOS ANGELES	Herrick Avenue Elementary	61/64733-00-3859	Reimbursement	3/14/2008	3/24/2010	$ 3,777
LOS ANGELES UNIFIED	LOS ANGELES	Broadous (Hillery T.) Elementary	61/64733-00-3860	Reimbursement	3/14/2008	3/24/2010	$ 5,364
LOS ANGELES UNIFIED	LOS ANGELES	Hillside Elementary	61/64733-00-3861	Reimbursement	3/14/2008	3/24/2010	$ 34,310
LOS ANGELES UNIFIED	LOS ANGELES	Hollenbeck Middle	61/64733-00-3862	Reimbursement	3/14/2008	3/24/2010	$ 19,724
LOS ANGELES UNIFIED	LOS ANGELES	Hollywood Senior High	61/64733-00-3863	Reimbursement	3/14/2008	3/24/2010	$ 25,775
LOS ANGELES UNIFIED	LOS ANGELES	Holmes Avenue Elementary	61/64733-00-3864	Reimbursement	3/14/2008	3/24/2010	$ 13,718
LOS ANGELES UNIFIED	LOS ANGELES	Hoover Street Elementary	61/64733-00-3865	Reimbursement	3/14/2008	3/24/2010	$ 17,560
LOS ANGELES UNIFIED	LOS ANGELES	State Street New Elementary #1	61/64733-00-3866	Reimbursement	3/14/2008	3/24/2010	$ 6,598
LOS ANGELES UNIFIED	LOS ANGELES	Mann (Horace) Junior High	61/64733-00-3867	Reimbursement	3/14/2008	3/24/2010	$ 25,108
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-3868	Reimbursement	3/14/2008	3/24/2010	$ 25,962
LOS ANGELES UNIFIED	LOS ANGELES	Hyde Park Blvd. Elementary	61/64733-00-3869	Reimbursement	3/14/2008	3/24/2010	$ 15,393
LOS ANGELES UNIFIED	LOS ANGELES	Independence Elementary	61/64733-00-3870	Reimbursement	3/14/2008	3/24/2010	$ 12,487
LOS ANGELES UNIFIED	LOS ANGELES	Garfield (James A.) Senior High	61/64733-00-3871	Reimbursement	3/14/2008	3/24/2010	$ 95,849
LOS ANGELES UNIFIED	LOS ANGELES	Madison (James) Middle	61/64733-00-3872	Reimbursement	3/14/2008	3/24/2010	$ 22,455
LOS ANGELES UNIFIED	LOS ANGELES	Monroe (James) High	61/64733-00-3873	Reimbursement	3/14/2008	3/24/2010	$ 33,518
LOS ANGELES UNIFIED	LOS ANGELES	Adams (John) Middle	61/64733-00-3874	Reimbursement	3/14/2008	3/24/2010	$ 6,368
LOS ANGELES UNIFIED	LOS ANGELES	Fremont (John C.) Senior High	61/64733-00-3875	Reimbursement	3/14/2008	3/24/2010	$ 48,175
LOS ANGELES UNIFIED	LOS ANGELES	Kennedy (John F.) High	61/64733-00-3876	Reimbursement	3/14/2008	3/24/2010	$ 12,626
LOS ANGELES UNIFIED	LOS ANGELES	Francis (John H.) Polytechnic	61/64733-00-3877	Reimbursement	3/14/2008	3/24/2010	$ 25,590
LOS ANGELES UNIFIED	LOS ANGELES	Marshall (John) Senior High	61/64733-00-3878	Reimbursement	3/14/2008	3/24/2010	$ 44,823
LOS ANGELES UNIFIED	LOS ANGELES	Muir (John) Middle	61/64733-00-3879	Reimbursement	3/14/2008	3/24/2010	$ 21,817
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts New Elementary #3	61/64733-00-3880	Reimbursement	3/14/2008	3/24/2010	$ 6,408
LOS ANGELES UNIFIED	LOS ANGELES	Mt. Vernon Middle	61/64733-00-3881	Reimbursement	3/14/2008	3/24/2010	$ 18,290
LOS ANGELES UNIFIED	LOS ANGELES	Le Conte (Joseph) Middle	61/64733-00-3882	Reimbursement	3/14/2008	3/24/2010	$ 18,819
LOS ANGELES UNIFIED	LOS ANGELES	Kittridge Street Elementary	61/64733-00-3883	Reimbursement	3/14/2008	3/24/2010	$ 9,876

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District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
LOS ANGELES UNIFIED	LOS ANGELES	Langdon Avenue Elementary	61/64733-00-3884	Reimbursement	3/14/2008	3/24/2010	$ 11,320
LOS ANGELES UNIFIED	LOS ANGELES	Lankershim Elementary	61/64733-00-3885	Reimbursement	3/14/2008	3/24/2010	$ 7,658
LOS ANGELES UNIFIED	LOS ANGELES	Weemes (Lenicia B.) Elementary	61/64733-00-3886	Reimbursement	3/14/2008	3/24/2010	$ 12,174
LOS ANGELES UNIFIED	LOS ANGELES	Politi (Leo) Elementary	61/64733-00-3887	Reimbursement	3/14/2008	3/24/2010	$ 10,679
LOS ANGELES UNIFIED	LOS ANGELES	Liberty Boulevard Elementary	61/64733-00-3888	Reimbursement	3/14/2008	3/24/2010	$ 5,909
LOS ANGELES UNIFIED	LOS ANGELES	Liggett Street Elementary	61/64733-00-3889	Reimbursement	3/14/2008	3/24/2010	$ 19,771
LOS ANGELES UNIFIED	LOS ANGELES	Limerick Avenue Elementary	61/64733-00-3890	Reimbursement	3/14/2008	3/24/2010	$ 18,560
LOS ANGELES UNIFIED	LOS ANGELES	Logan Street Elementary	61/64733-00-3891	Reimbursement	3/14/2008	3/24/2010	$ 30,461
LOS ANGELES UNIFIED	LOS ANGELES	Lorena Street Elementary	61/64733-00-3892	Reimbursement	3/14/2008	3/24/2010	$ 11,940
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Academy Middle	61/64733-00-3893	Reimbursement	3/14/2008	3/24/2010	$ 10,451
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Elementary	61/64733-00-3894	Reimbursement	3/14/2008	3/24/2010	$ 21,132
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Senior High	61/64733-00-3895	Reimbursement	3/14/2008	3/24/2010	$ 39,914
LOS ANGELES UNIFIED	LOS ANGELES	Flournoy (Lovelia P.) Elementary	61/64733-00-3896	Reimbursement	3/14/2008	3/24/2010	$ 12,927
LOS ANGELES UNIFIED	LOS ANGELES	Burbank (Luther) Middle	61/64733-00-3897	Reimbursement	3/14/2008	3/24/2010	$ 15,459
LOS ANGELES UNIFIED	LOS ANGELES	South Gate New Elementary #6	61/64733-00-3898	Reimbursement	3/14/2008	3/24/2010	$ 6,511
LOS ANGELES UNIFIED	LOS ANGELES	Magnolia Avenue Elementary	61/64733-00-3899	Reimbursement	3/14/2008	3/24/2010	$ 6,238
LOS ANGELES UNIFIED	LOS ANGELES	Main Street Elementary	61/64733-00-3900	Reimbursement	3/14/2008	3/24/2010	$ 8,908
LOS ANGELES UNIFIED	LOS ANGELES	Manchester Avenue Elementary	61/64733-00-3901	Reimbursement	3/14/2008	3/24/2010	$ 6,833
LOS ANGELES UNIFIED	LOS ANGELES	Manhattan Place Elementary	61/64733-00-3902	Reimbursement	3/14/2008	3/24/2010	$ 7,904
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts Senior High	61/64733-00-3903	Reimbursement	3/14/2008	3/24/2010	$ 42,403
LOS ANGELES UNIFIED	LOS ANGELES	Marina del Rey Middle	61/64733-00-3904	Reimbursement	3/14/2008	3/24/2010	$ 17,854
LOS ANGELES UNIFIED	LOS ANGELES	Mark Twain Middle	61/64733-00-3905	Reimbursement	3/14/2008	3/24/2010	$ 17,677
LOS ANGELES UNIFIED	LOS ANGELES	Bethune (Mary McLeod) Middle	61/64733-00-3906	Reimbursement	3/14/2008	3/24/2010	$ 25,661
LOS ANGELES UNIFIED	LOS ANGELES	Southeast Area New Learning Center	61/64733-00-3907	Reimbursement	3/14/2008	3/24/2010	$ 25,129
LOS ANGELES UNIFIED	LOS ANGELES	McKinley Avenue Elementary	61/64733-00-3908	Reimbursement	3/14/2008	3/24/2010	$ 9,314
LOS ANGELES UNIFIED	LOS ANGELES	Menlo Avenue Elementary	61/64733-00-3909	Reimbursement	3/14/2008	3/24/2010	$ 21,742
LOS ANGELES UNIFIED	LOS ANGELES	Middleton Street Elementary	61/64733-00-3910	Reimbursement	3/14/2008	3/24/2010	$ 10,536
LOS ANGELES UNIFIED	LOS ANGELES	Miramonte Elementary	61/64733-00-3911	Reimbursement	3/14/2008	3/24/2010	$ 22,363
LOS ANGELES UNIFIED	LOS ANGELES	Napa Street Elementary	61/64733-00-3912	Reimbursement	3/14/2008	3/24/2010	$ 9,325
LOS ANGELES UNIFIED	LOS ANGELES	Narbonne (Nathaniel) Senior High	61/64733-00-3913	Reimbursement	3/14/2008	3/24/2010	$ 19,683
LOS ANGELES UNIFIED	LOS ANGELES	Nevin Avenue Elementary	61/64733-00-3914	Reimbursement	3/14/2008	3/24/2010	$ 9,361
LOS ANGELES UNIFIED	LOS ANGELES	Ninety-Third Street Elementary	61/64733-00-3915	Reimbursement	3/14/2008	3/24/2010	$ 14,251
LOS ANGELES UNIFIED	LOS ANGELES	Noble Avenue Elementary	61/64733-00-3916	Reimbursement	3/14/2008	3/24/2010	$ 9,657
LOS ANGELES UNIFIED	LOS ANGELES	Normandie Avenue Elementary	61/64733-00-3917	Reimbursement	3/14/2008	3/24/2010	$ 6,360
LOS ANGELES UNIFIED	LOS ANGELES	North Hollywood Senior High	61/64733-00-3918	Reimbursement	3/14/2008	3/24/2010	$ 22,102
LOS ANGELES UNIFIED	LOS ANGELES	Northridge Middle	61/64733-00-3919	Reimbursement	3/14/2008	3/24/2010	$ 11,953
LOS ANGELES UNIFIED	LOS ANGELES	Norwood Street Elementary	61/64733-00-3920	Reimbursement	3/14/2008	3/24/2010	$ 6,096
LOS ANGELES UNIFIED	LOS ANGELES	Olive Vista Middle	61/64733-00-3921	Reimbursement	3/14/2008	3/24/2010	$ 20,653
LOS ANGELES UNIFIED	LOS ANGELES	O'Melveny Elementary	61/64733-00-3922	Reimbursement	3/14/2008	3/24/2010	$ 9,909
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Eighteenth Street	61/64733-00-3923	Reimbursement	3/14/2008	3/24/2010	$ 8,904
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Seventh Street Elementary	61/64733-00-3924	Reimbursement	3/14/2008	3/24/2010	$ 12,524
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Sixteenth Street Elem.	61/64733-00-3925	Reimbursement	3/14/2008	3/24/2010	$ 13,538
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Twelfth Street Elementary	61/64733-00-3926	Reimbursement	3/14/2008	3/24/2010	$ 6,790
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Twenty-Second Street Elem.	61/64733-00-3927	Reimbursement	3/14/2008	3/24/2010	$ 7,301
LOS ANGELES UNIFIED	LOS ANGELES	Oxnard Street Elementary	61/64733-00-3928	Reimbursement	3/14/2008	3/24/2010	$ 6,017

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LOS ANGELES UNIFIED	LOS ANGELES	Pacific Boulevard	61/64733-00-3929	Reimbursement	3/14/2008	3/24/2010	$ 8,555
LOS ANGELES UNIFIED	LOS ANGELES	Pacoima Middle	61/64733-00-3930	Reimbursement	3/14/2008	3/24/2010	$ 10,978
LOS ANGELES UNIFIED	LOS ANGELES	Parmelee Avenue Elementary	61/64733-00-3931	Reimbursement	3/14/2008	3/24/2010	$ 12,934
LOS ANGELES UNIFIED	LOS ANGELES	Banning (Phineas) Senior High	61/64733-00-3932	Reimbursement	3/14/2008	3/24/2010	$ 24,031
LOS ANGELES UNIFIED	LOS ANGELES	Pinewood Avenue Elementary	61/64733-00-3933	Reimbursement	3/14/2008	3/24/2010	$ 7,294
LOS ANGELES UNIFIED	LOS ANGELES	Pio Pico Elementary	61/64733-00-3934	Reimbursement	3/14/2008	3/24/2010	$ 22,229
LOS ANGELES UNIFIED	LOS ANGELES	Emerson (Ralph Waldo) Middle	61/64733-00-3935	Reimbursement	3/14/2008	3/24/2010	$ 7,381
LOS ANGELES UNIFIED	LOS ANGELES	Raymond Avenue Elementary	61/64733-00-3936	Reimbursement	3/14/2008	3/24/2010	$ 7,169
LOS ANGELES UNIFIED	LOS ANGELES	Byrd (Richard E.) Middle	61/64733-00-3937	Reimbursement	3/14/2008	3/24/2010	$ 20,290
LOS ANGELES UNIFIED	LOS ANGELES	Dana (Richard Henry) Middle	61/64733-00-3938	Reimbursement	3/14/2008	3/24/2010	$ 15,842
LOS ANGELES UNIFIED	LOS ANGELES	Ritter Elementary	61/64733-00-3939	Reimbursement	3/14/2008	3/24/2010	$ 10,945
LOS ANGELES UNIFIED	LOS ANGELES	Peary (Robert E.) Middle	61/64733-00-3940	Reimbursement	3/14/2008	3/24/2010	$ 19,630
LOS ANGELES UNIFIED	LOS ANGELES	Fulton (Robert) College Preparatory	61/64733-00-3941	Reimbursement	3/14/2008	3/24/2010	$ 11,944
LOS ANGELES UNIFIED	LOS ANGELES	Stevenson (Robert Louis) Middle	61/64733-00-3942	Reimbursement	3/14/2008	3/24/2010	$ 14,111
LOS ANGELES UNIFIED	LOS ANGELES	Rosemont Avenue Elementary	61/64733-00-3943	Reimbursement	3/14/2008	3/24/2010	$ 14,259
LOS ANGELES UNIFIED	LOS ANGELES	Rowan Avenue Elementary	61/64733-00-3944	Reimbursement	3/14/2008	3/24/2010	$ 53,522
LOS ANGELES UNIFIED	LOS ANGELES	Russell Elementary	61/64733-00-3945	Reimbursement	3/14/2008	3/24/2010	$ 6,704
LOS ANGELES UNIFIED	LOS ANGELES	Gompers (Samuel) Middle	61/64733-00-3946	Reimbursement	3/14/2008	3/24/2010	$ 18,789
LOS ANGELES UNIFIED	LOS ANGELES	San Antonio Elementary	61/64733-00-3947	Reimbursement	3/14/2008	3/24/2010	$ 10,148
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Elementary	61/64733-00-3948	Reimbursement	3/14/2008	3/24/2010	$ 6,125
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Middle	61/64733-00-3949	Reimbursement	3/14/2008	3/24/2010	$ 19,004
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Senior High	61/64733-00-3950	Reimbursement	3/14/2008	3/24/2010	$ 24,250
LOS ANGELES UNIFIED	LOS ANGELES	San Gabriel Avenue Elementary	61/64733-00-3951	Reimbursement	3/14/2008	3/24/2010	$ 5,727
LOS ANGELES UNIFIED	LOS ANGELES	San Miguel Elementary	61/64733-00-3952	Reimbursement	3/14/2008	3/24/2010	$ 28,539
LOS ANGELES UNIFIED	LOS ANGELES	San Pedro Senior High	61/64733-00-3953	Reimbursement	3/14/2008	3/24/2010	$ 23,650
LOS ANGELES UNIFIED	LOS ANGELES	South LA Area New High #1	61/64733-00-3954	Reimbursement	3/14/2008	3/24/2010	$ 13,876
LOS ANGELES UNIFIED	LOS ANGELES	Selma Avenue Elementary	61/64733-00-3955	Reimbursement	3/14/2008	3/24/2010	$ 11,389
LOS ANGELES UNIFIED	LOS ANGELES	Seventy-Fifth Street Elementary	61/64733-00-3956	Reimbursement	3/14/2008	3/24/2010	$ 17,867
LOS ANGELES UNIFIED	LOS ANGELES	Seventy-Fourth Street Elementary	61/64733-00-3957	Reimbursement	3/14/2008	3/24/2010	$ 9,738
LOS ANGELES UNIFIED	LOS ANGELES	Sharp Avenue Elementary	61/64733-00-3958	Reimbursement	3/14/2008	3/24/2010	$ 10,921
LOS ANGELES UNIFIED	LOS ANGELES	Sheridan Street Elementary	61/64733-00-3959	Reimbursement	3/14/2008	3/24/2010	$ 6,995
LOS ANGELES UNIFIED	LOS ANGELES	Sixty-Eighth Street Elementary	61/64733-00-3960	Reimbursement	3/14/2008	3/24/2010	$ 27,653
LOS ANGELES UNIFIED	LOS ANGELES	Sixty-Sixth Street Elementary	61/64733-00-3961	Reimbursement	3/14/2008	3/24/2010	$ 13,039
LOS ANGELES UNIFIED	LOS ANGELES	South East High	61/64733-00-3962	Reimbursement	3/14/2008	3/24/2010	$ 11,514
LOS ANGELES UNIFIED	LOS ANGELES	South Gate Middle	61/64733-00-3963	Reimbursement	3/14/2008	3/24/2010	$ 5,239
LOS ANGELES UNIFIED	LOS ANGELES	South Gate Senior High	61/64733-00-3964	Reimbursement	3/14/2008	3/24/2010	$ 25,292
LOS ANGELES UNIFIED	LOS ANGELES	South Park Elementary	61/64733-00-3965	Reimbursement	3/14/2008	3/24/2010	$ 6,885
LOS ANGELES UNIFIED	LOS ANGELES	State Street Elementary	61/64733-00-3966	Reimbursement	3/14/2008	3/24/2010	$ 11,527
LOS ANGELES UNIFIED	LOS ANGELES	Stoner Avenue Elementary	61/64733-00-3967	Reimbursement	3/14/2008	3/24/2010	$ 12,631
LOS ANGELES UNIFIED	LOS ANGELES	Sun Valley Middle	61/64733-00-3968	Reimbursement	3/14/2008	3/24/2010	$ 8,893
LOS ANGELES UNIFIED	LOS ANGELES	Sunny Brae Avenue Elementary	61/64733-00-3969	Reimbursement	3/14/2008	3/24/2010	$ 21,268
LOS ANGELES UNIFIED	LOS ANGELES	Dorsey (Susan Miller) Senior High	61/64733-00-3970	Reimbursement	3/14/2008	3/24/2010	$ 51,971
LOS ANGELES UNIFIED	LOS ANGELES	Sylmar Elementary	61/64733-00-3971	Reimbursement	3/14/2008	3/24/2010	$ 9,033
LOS ANGELES UNIFIED	LOS ANGELES	Sylmar Senior High	61/64733-00-3972	Reimbursement	3/14/2008	3/24/2010	$ 18,351
LOS ANGELES UNIFIED	LOS ANGELES	Sylvan Park Elementary	61/64733-00-3973	Reimbursement	3/14/2008	3/24/2010	$ 8,986

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District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
LOS ANGELES UNIFIED	LOS ANGELES	Telfair Avenue Elementary	61/64733-00-3974	Reimbursement	3/14/2008	3/24/2010	$ 14,273
LOS ANGELES UNIFIED	LOS ANGELES	Tenth Street Elementary	61/64733-00-3975	Reimbursement	3/14/2008	3/24/2010	$ 19,704
LOS ANGELES UNIFIED	LOS ANGELES	Hughes (Teresa) Elementary	61/64733-00-3976	Reimbursement	3/14/2008	3/24/2010	$ 10,467
LOS ANGELES UNIFIED	LOS ANGELES	Roosevelt (Theodore) Senior High	61/64733-00-3977	Reimbursement	3/14/2008	3/24/2010	$ 38,843
LOS ANGELES UNIFIED	LOS ANGELES	Thirty-Second St. USC Performing Arts	61/64733-00-3978	Reimbursement	3/14/2008	3/24/2010	$ 5,619
LOS ANGELES UNIFIED	LOS ANGELES	Edison (Thomas A.) Middle	61/64733-00-3979	Reimbursement	3/14/2008	3/24/2010	$ 17,258
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson (Thomas) Senior High	61/64733-00-3980	Reimbursement	3/14/2008	3/24/2010	$ 33,588
LOS ANGELES UNIFIED	LOS ANGELES	King (Thomas Starr) Middle	61/64733-00-3981	Reimbursement	3/14/2008	3/24/2010	$ 39,713
LOS ANGELES UNIFIED	LOS ANGELES	Trinity Street Elementary	61/64733-00-3982	Reimbursement	3/14/2008	3/24/2010	$ 8,497
LOS ANGELES UNIFIED	LOS ANGELES	Twentieth Street Elementary	61/64733-00-3983	Reimbursement	3/14/2008	3/24/2010	$ 5,877
LOS ANGELES UNIFIED	LOS ANGELES	Twenty-Eighth Street Elementary	61/64733-00-3984	Reimbursement	3/14/2008	3/24/2010	$ 13,551
LOS ANGELES UNIFIED	LOS ANGELES	Twenty-Fourth Street Elementary	61/64733-00-3985	Reimbursement	3/14/2008	3/24/2010	$ 10,616
LOS ANGELES UNIFIED	LOS ANGELES	Grant (Ulysses S.) Senior High	61/64733-00-3986	Reimbursement	3/14/2008	3/24/2010	$ 24,580
LOS ANGELES UNIFIED	LOS ANGELES	Union Avenue Elementary	61/64733-00-3987	Reimbursement	3/14/2008	3/24/2010	$ 11,629
LOS ANGELES UNIFIED	LOS ANGELES	University Senior High	61/64733-00-3988	Reimbursement	3/14/2008	3/24/2010	$ 40,066
LOS ANGELES UNIFIED	LOS ANGELES	Utah Street Elementary	61/64733-00-3989	Reimbursement	3/14/2008	3/24/2010	$ 8,082
LOS ANGELES UNIFIED	LOS ANGELES	Van Nuys Middle	61/64733-00-3990	Reimbursement	3/14/2008	3/24/2010	$ 13,866
LOS ANGELES UNIFIED	LOS ANGELES	Van Nuys Senior High	61/64733-00-3991	Reimbursement	3/14/2008	3/24/2010	$ 11,623
LOS ANGELES UNIFIED	LOS ANGELES	Vermont Avenue Elementary	61/64733-00-3992	Reimbursement	3/14/2008	3/24/2010	$ 9,200
LOS ANGELES UNIFIED	LOS ANGELES	Virgil Middle	61/64733-00-3993	Reimbursement	3/14/2008	3/24/2010	$ 34,030
LOS ANGELES UNIFIED	LOS ANGELES	Virginia Road Elementary	61/64733-00-3994	Reimbursement	3/14/2008	3/24/2010	$ 6,937
LOS ANGELES UNIFIED	LOS ANGELES	East Valley Area New Middle School 2	61/64733-00-3995	Reimbursement	3/14/2008	3/24/2010	$ 7,221
LOS ANGELES UNIFIED	LOS ANGELES	Wadsworth Avenue Elementary	61/64733-00-3996	Reimbursement	3/14/2008	3/24/2010	$ 10,488
LOS ANGELES UNIFIED	LOS ANGELES	Walnut Park Elementary	61/64733-00-3997	Reimbursement	3/14/2008	3/24/2010	$ 5,768
LOS ANGELES UNIFIED	LOS ANGELES	Irving (Washington) Middle	61/64733-00-3998	Reimbursement	3/14/2008	3/24/2010	$ 18,625
LOS ANGELES UNIFIED	LOS ANGELES	West Vernon Avenue Elementary	61/64733-00-3999	Reimbursement	3/14/2008	3/24/2010	$ 26,218
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4000	Reimbursement	3/14/2008	3/24/2010	$ 31,668
LOS ANGELES UNIFIED	LOS ANGELES	Western Avenue Elementary	61/64733-00-4001	Reimbursement	3/14/2008	3/24/2010	$ 19,031
LOS ANGELES UNIFIED	LOS ANGELES	Wilmington Middle	61/64733-00-4002	Reimbursement	3/14/2008	3/24/2010	$ 18,929
LOS ANGELES UNIFIED	LOS ANGELES	Woodcrest Elementary	61/64733-00-4003	Reimbursement	3/14/2008	3/24/2010	$ 6,191
LOS ANGELES UNIFIED	LOS ANGELES	Woodlawn Avenue Elementary	61/64733-00-4004	Reimbursement	3/14/2008	3/24/2010	$ 6,163
LOS ANGELES UNIFIED	LOS ANGELES	Wilson (Woodrow) Senior High	61/64733-00-4005	Reimbursement	3/14/2008	3/24/2010	$ 18,980
PLANADA ELEMENTARY	MERCED	Planada Elementary	61/65821-00-0003	Reimbursement	3/14/2008	1/27/2010	$ 41,795
MONTEREY PENINSULA UNIFIED	MONTEREY	Highland Elementary	61/66092-00-0004	Grant	3/14/2008	1/27/2010	$ 1,290,192
MONTEREY PENINSULA UNIFIED	MONTEREY	Seaside High	61/66092-00-0005	Grant	3/14/2008	1/27/2010	$ 3,930,572
MONTEREY PENINSULA UNIFIED	MONTEREY	King (Martin Luther)	61/66092-00-0006	Grant	3/14/2008	1/27/2010	$ 1,943,075
PLANADA ELEMENTARY	MERCED	Planada Elementary	61/65821-00-0004	Reimbursement	3/17/2008	3/24/2010	$ 231,167
LYNWOOD UNIFIED	LOS ANGELES	Roosevelt Elementary	61/64774-00-0021	Grant	3/18/2008	3/24/2010	$ 8,127
OXNARD ELEMENTARY	VENTURA	Ramona Elementary	61/72538-00-0022	Reimbursement	3/18/2008	1/27/2010	$ 133,049
OXNARD ELEMENTARY	VENTURA	Driffill Elementary	61/72538-00-0023	Grant	3/18/2008	2/24/2010	$ 450,966
WASHINGTON UNIFIED	YOLO	Golden State Middle	61/72694-00-0001	Grant	3/18/2008	2/24/2010	$ 72,417
WASHINGTON UNIFIED	YOLO	Golden State Middle	61/72694-00-0002	Grant	3/18/2008	2/24/2010	$ 32,968
WASHINGTON UNIFIED	YOLO	Golden State Middle	61/72694-00-0003	Grant	3/18/2008	2/24/2010	$ 158,154
COMPTON UNIFIED	LOS ANGELES	Carver Elementary	61/73437-00-0071	Grant	3/18/2008	3/24/2010	$ 24,331
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	61/64808-00-0022	Reimbursement	3/19/2008	2/24/2010	$ 49,442

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MONTEBELLO UNIFIED	LOS ANGELES	Montebello Park Elementary	61/64808-00-0023	Reimbursement	3/19/2008	2/24/2010	$ 4,700
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	61/64808-00-0024	Grant	3/19/2008	2/24/2010	$ 132,213
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0008	Reimbursement	3/19/2008	1/27/2010	$ 10,371
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0009	Grant	3/19/2008	1/27/2010	$ 6,614
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0010	Grant	3/19/2008	1/27/2010	$ 42,498
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0011	Grant	3/19/2008	1/27/2010	$ 24,020
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0012	Grant	3/19/2008	1/27/2010	$ 7,051
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0013	Grant	3/19/2008	2/24/2010	$ 35,351
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0014	Grant	3/19/2008	2/24/2010	$ 3,724
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0015	Grant	3/19/2008	2/24/2010	$ 11,228
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0016	Grant	3/19/2008	2/24/2010	$ 53,744
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0018	Grant	3/19/2008	2/24/2010	$ 16,380
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0019	Grant	3/19/2008	3/24/2010	$ 17,448
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Cahuilla Desert Academy (Jr. High)	61/73676-00-0085	Grant	3/19/2008	1/27/2010	$ 6,311
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Mountain Vista Elementary	61/73676-00-0087	Grant	3/19/2008	1/27/2010	$ 6,009
SANTA ANA UNIFIED	ORANGE	Spurgeon Intermediate	61/66670-00-0044	Grant	3/20/2008	2/24/2010	$ 65,278
JURUPA UNIFIED	RIVERSIDE	Jurupa Valley High	61/67090-00-0209	Reimbursement	3/20/2008	2/24/2010	$ 3,601
JURUPA UNIFIED	RIVERSIDE	Rubidoux High	61/67090-00-0210	Reimbursement	3/20/2008	1/27/2010	$ 45,518
ONTARIO-MONTCLAIR ELEMENTARY	SAN BERNARDIN(	Vineyard Elementary	61/67819-00-0102	Grant	3/20/2008	1/27/2010	$ 22,413
SAN DIEGO UNIFIED	SAN DIEGO	Mann Middle	61/68338-00-0255	Reimbursement	3/20/2008	2/24/2010	$ 37,083
SAN DIEGO UNIFIED	SAN DIEGO	Mann Middle	61/68338-00-0254	Reimbursement	3/21/2008	2/24/2010	$ 38,224
FILLMORE UNIFIED	VENTURA	San Cayetano Elementary	61/72454-00-0018	Reimbursement	3/21/2008	1/27/2010	$ 151,272
FILLMORE UNIFIED	VENTURA	Piru Elementary	61/72454-00-0019	Reimbursement	3/21/2008	1/27/2010	$ 25,621
SALINAS CITY ELEMENTARY	MONTEREY	Sherwood Elementary	61/66142-00-0015	Grant	3/24/2008	2/24/2010	$ 759,054
SALINAS CITY ELEMENTARY	MONTEREY	Roosevelt Elementary	61/66142-00-0019	Grant	3/24/2008	2/24/2010	$ 1,102,740
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wood (Will C.) Middle	61/67439-00-0103	Grant	3/25/2008	3/24/2010	$ 87,180
SACRAMENTO CITY UNIFIED	SACRAMENTO	Harkness (H.W.) Elementary	61/67439-00-0104	Grant	3/25/2008	1/27/2010	$ 10,378
SACRAMENTO CITY UNIFIED	SACRAMENTO	Phillips (Ethel) Elementary	61/67439-00-0105	Grant	3/25/2008	1/27/2010	$ 12,266
SACRAMENTO CITY UNIFIED	SACRAMENTO	Oak Ridge Elementary	61/67439-00-0106	Grant	3/25/2008	1/27/2010	$ 14,510
SACRAMENTO CITY UNIFIED	SACRAMENTO	Birney (Alice) Elementary	61/67439-00-0107	Grant	3/25/2008	1/27/2010	$ 13,592
SACRAMENTO CITY UNIFIED	SACRAMENTO	Harkness (H.W.) Elementary	61/67439-00-0108	Grant	3/25/2008	1/27/2010	$ 14,892
SACRAMENTO CITY UNIFIED	SACRAMENTO	Smith (Jedediah) Elementary	61/67439-00-0109	Grant	3/25/2008	1/27/2010	$ 13,490
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0110	Grant	3/25/2008	1/27/2010	$ 12,139
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bonnheim (Joseph) Elementary	61/67439-00-0111	Grant	3/25/2008	1/27/2010	$ 15,402
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bear Flag Elementary	61/67439-00-0112	Grant	3/25/2008	1/27/2010	$ 11,323
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bacon (Fern) Middle	61/67439-00-0113	Grant	3/25/2008	2/24/2010	$ 287,335
LENNOX ELEMENTARY	LOS ANGELES	Moffett Elementary	61/64709-00-0004	Grant	3/26/2008	2/24/2010	$ 391,835
LENNOX ELEMENTARY	LOS ANGELES	Felton Elementary	61/64709-00-0013	Reimbursement	3/26/2008	4/28/2010	$ 90,598
LENNOX ELEMENTARY	LOS ANGELES	Felton Elementary	61/64709-00-0014	Reimbursement	3/26/2008	4/28/2010	$ 743,271
RIVER DELTA JOINT UNIFIED	SACRAMENTO	Isleton Elementary	61/67413-00-0005	Reimbursement	3/27/2008	2/24/2010	$ 688,090
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0010	Grant	3/28/2008	5/26/2010	$ 1,351,702
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0011	Grant	3/28/2008	3/24/2010	$ 202,941
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0012	Grant	3/28/2008	5/26/2010	$ 167,592
HAMILTON UNION ELEMENTARY	GLENN	Hamilton Elementary	61/62570-00-0002	Grant	4/1/2008	5/26/2010	$ 277,941
LYNWOOD UNIFIED	LOS ANGELES	Rogers (Will) Elementary	61/64774-00-0026	Grant	4/1/2008	6/23/2010	$ 195,794

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PALMDALE ELEMENTARY	LOS ANGELES	Yucca Elementary	61/64857-00-0009	Reimbursement	4/1/2008	4/28/2010	$ 37,673
PALMDALE ELEMENTARY	LOS ANGELES	Wildflower Elementary	61/64857-00-0010	Reimbursement	4/1/2008	4/28/2010	$ 36,486
PALMDALE ELEMENTARY	LOS ANGELES	Tumbleweed Elementary	61/64857-00-0011	Reimbursement	4/1/2008	4/28/2010	$ 34,080
PALMDALE ELEMENTARY	LOS ANGELES	Tamarisk Elementary	61/64857-00-0012	Reimbursement	4/1/2008	4/28/2010	$ 42,614
PALMDALE ELEMENTARY	LOS ANGELES	Mesquite Elementary	61/64857-00-0013	Reimbursement	4/1/2008	4/28/2010	$ 35,097
PALMDALE ELEMENTARY	LOS ANGELES	Palm Tree Elementary	61/64857-00-0014	Reimbursement	4/1/2008	4/28/2010	$ 20,476
PALMDALE ELEMENTARY	LOS ANGELES	Summerwind Elementary	61/64857-00-0015	Reimbursement	4/1/2008	4/28/2010	$ 34,393
PALMDALE ELEMENTARY	LOS ANGELES	Mesa Intermediate	61/64857-00-0016	Reimbursement	4/1/2008	4/28/2010	$ 34,078
PALMDALE ELEMENTARY	LOS ANGELES	Manzanita Elementary	61/64857-00-0017	Reimbursement	4/1/2008	4/28/2010	$ 32,634
PALMDALE ELEMENTARY	LOS ANGELES	Juniper Intermediate	61/64857-00-0018	Reimbursement	4/1/2008	4/28/2010	$ 34,078
PALMDALE ELEMENTARY	LOS ANGELES	Joshua Hills Elementary	61/64857-00-0019	Reimbursement	4/1/2008	4/28/2010	$ 21,242
PALMDALE ELEMENTARY	LOS ANGELES	Desert Rose Elementary	61/64857-00-0020	Reimbursement	4/1/2008	4/28/2010	$ 24,688
PALMDALE ELEMENTARY	LOS ANGELES	Cactus	61/64857-00-0021	Reimbursement	4/1/2008	4/28/2010	$ 34,078
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0013	Grant	4/1/2008	5/26/2010	$ 308,895
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0014	Grant	4/1/2008	5/26/2010	$ 121,181
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0015	Grant	4/1/2008	5/26/2010	$ 673,763
NORTH SACRAMENTO ELEMENTARY	SACRAMENTO	Hagginwood Elementary	61/67397-00-0006	Grant	4/1/2008	6/23/2010	$ 437,433
NORTH SACRAMENTO ELEMENTARY	SACRAMENTO	Smythe (Alethea B.) Elementary	61/67397-00-0007	Grant	4/1/2008	6/23/2010	$ 809,116
SACRAMENTO CITY UNIFIED	SACRAMENTO	Goethe (Charles M.) Middle	61/67439-00-0116	Grant	4/1/2008	5/26/2010	$ 34,196
CHULA VISTA ELEMENTARY	SAN DIEGO	Castle Park Elementary	61/68023-00-0009	Reimbursement	4/1/2008	4/28/2010	$ 40,220
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0020	Grant	4/1/2008	4/28/2010	$ 6,739
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0024	Grant	4/1/2008	5/26/2010	$ 98,921
CUTLER-OROSI JOINT UNIFIED	TULARE	El Monte Jr. High	61/71860-00-0117	Reimbursement	4/1/2008	4/28/2010	$ 16,041
CUTLER-OROSI JOINT UNIFIED	TULARE	Cutler Elementary	61/71860-00-0118	Reimbursement	4/1/2008	4/28/2010	$ 8,569
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0119	Reimbursement	4/1/2008	4/28/2010	$ 10,950
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0010	Reimbursement	4/1/2008	4/28/2010	$ 6,608
SANTA PAULA ELEMENTARY	VENTURA	Isbell Middle	61/72587-00-0009	Reimbursement	4/1/2008	5/26/2010	$ 23,600
SANTA PAULA ELEMENTARY	VENTURA	Isbell Middle	61/72587-00-0010	Reimbursement	4/1/2008	4/28/2010	$ 70,126
KEPPEL UNION ELEMENTARY	LOS ANGELES	Antelope Elementary	61/64642-00-0046	Reimbursement	4/4/2008	4/28/2010	$ 13,751
SACRAMENTO CITY UNIFIED	SACRAMENTO	Twain (Mark) Elementary	61/67439-00-0114	Grant	4/4/2008	6/23/2010	$ 38,499
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bacon (Fern) Middle	61/67439-00-0115	Grant	4/4/2008	5/26/2010	$ 94,578
COLTON JOINT UNIFIED	SAN BERNARDIN	Colton High	61/67686-00-0002	Reimbursement	4/4/2008	4/28/2010	$ 644,937
COLTON JOINT UNIFIED	SAN BERNARDIN	Colton High	61/67686-00-0007	Reimbursement	4/4/2008	4/28/2010	$ 78,779
BELLEVUE UNION ELEMENTARY	SONOMA	Bellevue Elementary	61/70615-00-0021	Reimbursement	4/4/2008	4/28/2010	$ 27,442
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0122	Reimbursement	4/4/2008	4/28/2010	$ 37,023
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0123	Reimbursement	4/4/2008	4/28/2010	$ 29,850
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0124	Reimbursement	4/4/2008	4/28/2010	$ 10,393
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0125	Grant	4/4/2008	6/23/2010	$ 114,251
LENNOX ELEMENTARY	LOS ANGELES	Jefferson Elementary	61/64709-00-0015	Reimbursement	4/7/2008	4/28/2010	$ 97,239
LENNOX ELEMENTARY	LOS ANGELES	Jefferson Elementary	61/64709-00-0016	Grant	4/7/2008	6/23/2010	$ 454,325
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0045	Grant	4/7/2008	2/24/2010	$ 36,207
SANTA ANA UNIFIED	ORANGE	Lincoln (Abraham) Elementary	61/66670-00-0046	Grant	4/7/2008	8/4/2010	$ 915,037
SANTA ANA UNIFIED	ORANGE	Willard Intermediate	61/66670-00-0047	Grant	4/7/2008	8/4/2010	$ 941,005
SANTA ANA UNIFIED	ORANGE	Spurgeon Intermediate	61/66670-00-0048	Grant	4/7/2008	6/23/2010	$ 1,382,975
SANTA ANA UNIFIED	ORANGE	Lathrop (Julia C.) Intermediate	61/66670-00-0049	Grant	4/7/2008	6/23/2010	$ 1,412,536

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SAN DIEGO UNIFIED	SAN DIEGO	Memorial Academy Charter	61/68338-00-0256	Reimbursement	4/7/2008	4/28/2010	$ 18,545
SAN DIEGO UNIFIED	SAN DIEGO	Memorial Academy Charter	61/68338-00-0257	Reimbursement	4/7/2008	4/28/2010	$ 18,853
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0022	Reimbursement	4/7/2008	5/26/2010	$ 17,019
CUTLER-OROSI JOINT UNIFIED	TULARE	Cutler Elementary	61/71860-00-0120	Grant	4/7/2008	4/28/2010	$ 36,700
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0121	Reimbursement	4/7/2008	4/28/2010	$ 23,600
LENNOX ELEMENTARY	LOS ANGELES	Buford Elementary	61/64709-00-0017	Reimbursement	4/8/2008	6/23/2010	$ 90,151
SANTA ANA UNIFIED	ORANGE	Lincoln (Abraham) Elementary	61/66670-00-0050	Grant	4/8/2008	2/24/2010	$ 84,153
SANTA ANA UNIFIED	ORANGE	Lincoln (Abraham) Elementary	61/66670-00-0051	Grant	4/8/2008	6/23/2010	$ 61,979
SANTA ANA UNIFIED	ORANGE	Diamond Elementary	61/66670-00-0052	Grant	4/8/2008	6/23/2010	$ 153,900
SANTA ANA UNIFIED	ORANGE	Diamond Elementary	61/66670-00-0053	Grant	4/8/2008	6/23/2010	$ 21,602
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0016	Grant	4/8/2008	8/4/2010	$ 1,322,805
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0017	Grant	4/8/2008	8/4/2010	$ 277,808
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0018	Grant	4/8/2008	6/23/2010	$ 902,792
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0117	Grant	4/8/2008	6/23/2010	$ 3,021,961
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0118	Grant	4/8/2008	8/4/2010	$ 809,586
SACRAMENTO CITY UNIFIED	SACRAMENTO	Tahoe Elementary	61/67439-00-0119	Grant	4/8/2008	8/4/2010	$ 264,366
STOCKTON CITY UNIFIED	SAN JOAQUIN	Franklin Senior High	61/68676-00-0048	Reimbursement	4/8/2008	4/28/2010	$ 79,118
WASHINGTON UNIFIED	YOLO	Westfield Village Elementary	61/72694-00-0004	Grant	4/8/2008	5/26/2010	$ 65,421
WASHINGTON UNIFIED	YOLO	Golden State Middle (Riverbank Elem.)	61/72694-00-0005	Grant	4/8/2008	5/26/2010	$ 419,606
WASHINGTON UNIFIED	YOLO	Golden State Middle (Riverbank Elem.)	61/72694-00-0006	Grant	4/8/2008	6/23/2010	$ 163,056
WASHINGTON UNIFIED	YOLO	Golden State Middle (Riverbank Elem.)	61/72694-00-0007	Grant	4/8/2008	6/23/2010	$ 235,837
WASHINGTON UNIFIED	YOLO	Golden State Middle (Riverbank Elem.)	61/72694-00-0008	Grant	4/8/2008	6/23/2010	$ 172,017
WASHINGTON UNIFIED	YOLO	Golden State Middle (Riverbank Elem.)	61/72694-00-0009	Grant	4/8/2008	6/23/2010	$ 217,214
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0019	Grant	4/9/2008	6/23/2010	$ 94,582
SACRAMENTO CITY UNIFIED	SACRAMENTO	Alice Birney Waldorf-Inspired K-8	61/67439-00-0120	Grant	4/9/2008	10/6/2010	$ 45,729
SACRAMENTO CITY UNIFIED	SACRAMENTO	Morse (John F.) Elementary	61/67439-00-0121	Grant	4/9/2008	5/26/2010	$ 27,767
SACRAMENTO CITY UNIFIED	SACRAMENTO	Morse (John F.) Elementary	61/67439-00-0122	Grant	4/9/2008	5/26/2010	$ 47,963
SACRAMENTO CITY UNIFIED	SACRAMENTO	Harkness (H.W.) Elementary	61/67439-00-0123	Grant	4/9/2008	5/26/2010	$ 85,728
MONTAGUE ELEMENTARY	SISKIYOU	Montague Elementary	61/70417-00-0021	Grant	4/9/2008	6/23/2010	$ 168,137
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Chavez (Cesar) Elementary	61/73676-00-0088	Grant	4/9/2008	5/26/2010	$ 7,076
RIVER DELTA JOINT UNIFIED	SACRAMENTO	Isleton Elementary	61/67413-00-0006	Reimbursement	4/10/2008	4/28/2010	$ 54,425
RIVER DELTA JOINT UNIFIED	SACRAMENTO	Isleton Elementary	61/67413-00-0007	Grant	4/10/2008	4/28/2010	$ 19,875
RIVER DELTA JOINT UNIFIED	SACRAMENTO	Isleton Elementary	61/67413-00-0008	Grant	4/10/2008	8/25/2010	$ 114,340
RIVER DELTA JOINT UNIFIED	SACRAMENTO	Isleton Elementary	61/67413-00-0009	Reimbursement	4/10/2008	8/25/2010	$ 78,427
SACRAMENTO CITY UNIFIED	SACRAMENTO	Tahoe Elementary	61/67439-00-0124	Grant	4/10/2008	5/26/2010	$ 71,437
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0134	Grant	4/10/2008	8/25/2010	$ 532,375
SANTA ROSA HIGH	SONOMA	Cook (Lawrence) Middle	61/70920-00-0001	Reimbursement	4/10/2008	10/6/2010	$ 1,574,105
RICHGROVE ELEMENTARY	TULARE	Richgrove Elementary	61/72082-00-0001	Grant	4/11/2008	6/23/2010	$ 22,425
RICHGROVE ELEMENTARY	TULARE	Richgrove Elementary	61/72082-00-0002	Grant	4/11/2008	6/23/2010	$ 146,166
RICHGROVE ELEMENTARY	TULARE	Richgrove Elementary	61/72082-00-0003	Grant	4/11/2008	5/26/2010	$ 39,268
PARLIER UNIFIED	FRESNO	Chavez (Cesar E.) Elementary	61/62364-00-0009	Grant	4/14/2008	6/23/2010	$ 893,226
PARLIER UNIFIED	FRESNO	Parlier High	61/62364-00-0010	Grant	4/14/2008	5/26/2010	$ 56,044
WEST PARK ELEMENTARY	FRESNO	West Park Elementary	61/62539-00-0004	Grant	4/14/2008	5/26/2010	$ 56,705
CORCORAN JOINT UNIFIED	KINGS	Fremont (John C.) Elementary	61/63891-00-0013	Grant	4/14/2008	11/3/2010	$ 147,848
LONG BEACH UNIFIED	LOS ANGELES	McKinley Elementary	61/64725-00-0039	Reimbursement	4/14/2008	6/23/2010	$ 6,151

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MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0020	Grant	4/14/2008	6/23/2010	$ 465,414
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0021	Grant	4/14/2008	8/25/2010	$ 1,548,340
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0022	Grant	4/14/2008	6/23/2010	$ 1,251,053
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0126	Reimbursement	4/14/2008	4/28/2010	$ 18,350
CUTLER-OROSI JOINT UNIFIED	TULARE	El Monte Jr. High	61/71860-00-0127	Reimbursement	4/14/2008	4/28/2010	$ 55,559
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Chavez (Cesar) Elementary	61/73676-00-0089	Reimbursement	4/14/2008	6/23/2010	$ 15,900
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Chavez (Cesar) Elementary	61/73676-00-0090	Grant	4/14/2008	4/28/2010	$ 279,843
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Palm View Elementary	61/73676-00-0091	Reimbursement	4/14/2008	4/28/2010	$ 11,105
NORTH MONTEREY COUNTY UNIFIED	MONTEREY	Prunedale Elementary	61/73825-00-0001	Grant	4/14/2008	8/25/2010	$ 125,675
NORTH MONTEREY COUNTY UNIFIED	MONTEREY	Castroville Elementary	61/73825-00-0002	Reimbursement	4/14/2008	4/28/2010	$ 491,080
TRACY JOINT UNIFIED	SAN JOAQUIN	Central Elementary	61/75499-00-0008	Reimbursement	4/14/2008	6/23/2010	$ 256,218
PORTERVILLE UNIFIED	TULARE	Vandalia Elementary	61/75523-00-0002	Grant	4/14/2008	8/25/2010	$ 439,210
PORTERVILLE UNIFIED	TULARE	Bartlett Intermediate	61/75523-00-0003	Grant	4/14/2008	8/25/2010	$ 320,526
PORTERVILLE UNIFIED	TULARE	Doyle (John J.) Elementary	61/75523-00-0004	Grant	4/14/2008	8/25/2010	$ 355,217
PORTERVILLE UNIFIED	TULARE	Pioneer Intermediate	61/75523-00-0005	Grant	4/14/2008	8/25/2010	$ 208,912
PORTERVILLE UNIFIED	TULARE	Vandalia Elementary	61/75523-00-0006	Grant	4/14/2008	8/25/2010	$ 263,156
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0018	Grant	4/15/2008	8/4/2010	$ 5,748,195
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0019	Grant	4/15/2008	8/4/2010	$ 3,526,917
MORENO VALLEY UNIFIED	RIVERSIDE	Badger Springs Middle	61/67124-00-0023	Grant	4/15/2008	8/4/2010	$ 557,623
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0024	Grant	4/15/2008	8/4/2010	$ 501,668
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wire (Clayton B.) Elementary	61/67439-00-0125	Grant	4/15/2008	8/25/2010	$ 2,503,717
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wire (Clayton B.) Elementary	61/67439-00-0126	Grant	4/15/2008	8/4/2010	$ 206,100
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wire (Clayton B.) Elementary	61/67439-00-0127	Grant	4/15/2008	8/25/2010	$ 432,989
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0128	Grant	4/15/2008	8/4/2010	$ 695,266
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0129	Grant	4/15/2008	8/4/2010	$ 1,202,404
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0010	Grant	4/15/2008	6/23/2010	$ 207,317
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0011	Grant	4/15/2008	10/6/2010	$ 185,297
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0012	Grant	4/15/2008	10/6/2010	$ 237,500
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0013	Grant	4/15/2008	10/6/2010	$ 196,670
WASHINGTON UNIFIED	YOLO	Elkhorn Village Elementary	61/72694-00-0014	Grant	4/15/2008	8/4/2010	$ 205,997
WASHINGTON UNIFIED	YOLO	Elkhorn Village Elementary	61/72694-00-0015	Grant	4/15/2008	8/4/2010	$ 221,189
WASHINGTON UNIFIED	YOLO	Elkhorn Village Elementary	61/72694-00-0016	Grant	4/15/2008	8/4/2010	$ 248,493
COMPTON UNIFIED	LOS ANGELES	Foster Elementary	61/73437-00-0072	Grant	4/15/2008	8/4/2010	$ 96,030
CHULA VISTA ELEMENTARY	SAN DIEGO	Montgomery (John J.) Elementary	61/68023-00-0010	Grant	4/16/2008	4/28/2010	$ 21,475
STOCKTON CITY UNIFIED	SAN JOAQUIN	Franklin Senior High	61/68676-00-0049	Reimbursement	4/16/2008	5/26/2010	$ 159,682
HANFORD JOINT UNION HIGH	KINGS	Hanford High	61/63925-00-0027	Grant Adjustment	4/17/2008	2/24/2010	$ 2,032
LOS ANGELES UNIFIED	LOS ANGELES	Hollenbeck Middle	61/64733-00-4006	Grant	4/17/2008	8/4/2010	$ 123,044
PASADENA UNIFIED	LOS ANGELES	Wilson Middle	61/64881-00-0036	Grant	4/17/2008	8/4/2010	$ 242,182
PASADENA UNIFIED	LOS ANGELES	Wilson Middle	61/64881-00-0037	Grant	4/17/2008	5/26/2010	$ 13,399
SANTA ANA UNIFIED	ORANGE	Martin Elementary	61/66670-00-0054	Grant	4/17/2008	6/23/2010	$ 50,235
SANTA ANA UNIFIED	ORANGE	Lathrop (Julia C.) Intermediate	61/66670-00-0055	Grant	4/17/2008	5/26/2010	$ 280,745
SANTA ANA UNIFIED	ORANGE	Martin Elementary	61/66670-00-0056	Grant	4/17/2008	6/23/2010	$ 131,759
SANTA ANA UNIFIED	ORANGE	Franklin Elementary	61/66670-00-0057	Grant	4/17/2008	6/23/2010	$ 6,821
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wire (Clayton B.) Elementary	61/67439-00-0131	Grant	4/17/2008	6/23/2010	$ 47,705
BELLEVUE UNION ELEMENTARY	SONOMA	Kawana Elementary	61/70615-00-0023	Grant	4/17/2008	8/4/2010	$ 12,382

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District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
SANTA ROSA HIGH	SONOMA	Cook (Lawrence) Middle	61/70920-00-0002	Grant	4/17/2008	8/4/2010	$ 566,580
FILLMORE UNIFIED	VENTURA	Piru Elementary	61/72454-00-0016	Grant	4/17/2008	8/25/2010	$ 1,327,349
FILLMORE UNIFIED	VENTURA	San Cayetano Elementary	61/72454-00-0017	Grant	4/17/2008	8/25/2010	$ 1,764,393
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0017	Grant	4/17/2008	8/4/2010	$ 30,327
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0018	Grant	4/17/2008	8/4/2010	$ 3,211
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0019	Reimbursement	4/17/2008	4/28/2010	$ 7,976
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0029	Grant	4/17/2008	8/4/2010	$ 54,252
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0030	Grant	4/17/2008	8/4/2010	$ 26,442
WASHINGTON UNIFIED	YOLO	Bryte Elementary	61/72694-00-0031	Grant	4/17/2008	8/4/2010	$ 17,009
COMPTON UNIFIED	LOS ANGELES	Emerson Elementary	61/73437-00-0073	Grant	4/17/2008	8/4/2010	$ 430,045
SANTA ANA UNIFIED	ORANGE	Fremont Elementary	61/66670-00-0058	Grant	4/18/2008	6/23/2010	$ 482,791
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0025	Grant	4/18/2008	6/23/2010	$ 476,486
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0026	Grant	4/18/2008	8/4/2010	$ 415,378
SACRAMENTO CITY UNIFIED	SACRAMENTO	Carson (Kit) Middle	61/67439-00-0132	Grant	4/18/2008	8/4/2010	$ 39,663
SACRAMENTO CITY UNIFIED	SACRAMENTO	Capital City (Independent Study)	61/67439-00-0133	Grant	4/18/2008	8/25/2010	$ 951,022
SACRAMENTO CITY UNIFIED	SACRAMENTO	Carson (Kit) Middle	61/67439-00-0271	Grant	4/18/2008	8/4/2010	$ 198,225
NEW HOPE ELEMENTARY	SAN JOAQUIN	New Hope Elementary	61/68619-00-0001	Grant	4/18/2008	5/26/2010	$ 229,065
SANTA ROSA HIGH	SONOMA	Cook (Lawrence) Middle	61/70920-00-0003	Reimbursement	4/18/2008	6/23/2010	$ 461,612
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0020	Grant	4/18/2008	8/25/2010	$ 7,092
WASHINGTON UNIFIED	YOLO	Golden State Middle (Riverbank Elem.)	61/72694-00-0021	Grant	4/18/2008	8/4/2010	$ 69,247
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0034	Grant	4/18/2008	8/25/2010	$ 14,443
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0035	Grant	4/18/2008	8/25/2010	$ 2,740
WASHINGTON UNIFIED	YOLO	West Sacramento School for Independent	61/72694-00-0036	Grant	4/18/2008	8/25/2010	$ 11,462
COMPTON UNIFIED	LOS ANGELES	Carver Elementary	61/73437-00-0074	Grant	4/18/2008	10/6/2010	$ 33,866
COMPTON UNIFIED	LOS ANGELES	Enterprise Middle	61/73437-00-0075	Grant	4/18/2008	10/6/2010	$ 154,957
COMPTON UNIFIED	LOS ANGELES	Enterprise Middle	61/73437-00-0214	Grant	4/18/2008	8/4/2010	$ 2,192
COMPTON UNIFIED	LOS ANGELES	Carver Elementary	61/73437-00-0215	Grant	4/18/2008	8/25/2010	$ 6,537
WASHINGTON UNIFIED	YOLO	Westfield Village Elementary	61/72694-00-0022	Grant	4/21/2008	8/25/2010	$ 58,990
WASHINGTON UNIFIED	YOLO	Westfield Village Elementary	61/72694-00-0032	Grant	4/21/2008	8/25/2010	$ 10,048
WASHINGTON UNIFIED	YOLO	Westfield Village Elementary	61/72694-00-0033	Grant	4/21/2008	8/25/2010	$ 20,572
COMPTON UNIFIED	LOS ANGELES	Kennedy (Robert F.) Elementary	61/73437-00-0076	Grant	4/21/2008	10/6/2010	$ 249,125
COMPTON UNIFIED	LOS ANGELES	Kennedy (Robert F.) Elementary	61/73437-00-0077	Grant	4/21/2008	10/6/2010	$ 255,915
COMPTON UNIFIED	LOS ANGELES	Kennedy (Robert F.) Elementary	61/73437-00-0078	Grant	4/21/2008	10/6/2010	$ 248,618
COMPTON UNIFIED	LOS ANGELES	Kelly Elementary	61/73437-00-0079	Grant	4/21/2008	10/6/2010	$ 263,305
COMPTON UNIFIED	LOS ANGELES	Kelly Elementary	61/73437-00-0080	Grant	4/21/2008	10/6/2010	$ 232,212
COMPTON UNIFIED	LOS ANGELES	Jefferson Elementary	61/73437-00-0081	Grant	4/21/2008	8/4/2010	$ 271,514
COMPTON UNIFIED	LOS ANGELES	Emerson Elementary	61/73437-00-0082	Grant	4/21/2008	8/4/2010	$ 167,891
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Westside Elementary	61/73676-00-0092	Grant	4/21/2008	6/23/2010	$ 12,250
PITTSBURG UNIFIED	CONTRA COSTA	Stoneman Elementary	61/61788-00-0106	Reimbursement	4/22/2008	8/4/2010	$ 5,254
PITTSBURG UNIFIED	CONTRA COSTA	Highlands Elementary	61/61788-00-0107	Reimbursement	4/22/2008	8/4/2010	$ 6,533
PITTSBURG UNIFIED	CONTRA COSTA	Parkside Elementary	61/61788-00-0108	Reimbursement	4/22/2008	8/4/2010	$ 5,277
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0109	Reimbursement	4/22/2008	8/4/2010	$ 10,292
LUCERNE ELEMENTARY	LAKE	Lucerne Elementary	61/64048-00-0002	Grant	4/22/2008	8/25/2010	$ 14,950
SAN FRANCISCO UNIFIED	SAN FRANCISCO	Drew (Charles R.) Elementary	61/68478-00-0005	Reimbursement	4/22/2008	6/23/2010	$ 173,624
FRESNO UNIFIED	FRESNO	Academy for New Americans	61/62166-00-0704	Reimbursement	4/23/2008	1/27/2010	$ 5,535

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FRESNO UNIFIED	FRESNO	Addams Elementary	61/62166-00-0705	Reimbursement	4/23/2008	1/27/2010	$ 17,664
FRESNO UNIFIED	FRESNO	Anthony (Susan B.) Elementary	61/62166-00-0706	Reimbursement	4/23/2008	1/27/2010	$ 19,839
FRESNO UNIFIED	FRESNO	Aynesworth Elementary	61/62166-00-0707	Reimbursement	4/23/2008	1/27/2010	$ 11,592
FRESNO UNIFIED	FRESNO	Bakman (Molly S.) Elementary	61/62166-00-0708	Reimbursement	4/23/2008	2/24/2010	$ 13,140
FRESNO UNIFIED	FRESNO	Balderas (Ezekiel) Elementary	61/62166-00-0709	Reimbursement	4/23/2008	1/27/2010	$ 16,616
FRESNO UNIFIED	FRESNO	Birney Elementary	61/62166-00-0710	Reimbursement	4/23/2008	2/24/2010	$ 14,867
FRESNO UNIFIED	FRESNO	Burroughs Elementary	61/62166-00-0711	Reimbursement	4/23/2008	1/27/2010	$ 25,441
FRESNO UNIFIED	FRESNO	Calwa Elementary	61/62166-00-0712	Reimbursement	4/23/2008	1/27/2010	$ 15,392
FRESNO UNIFIED	FRESNO	Carver Academy	61/62166-00-0713	Reimbursement	4/23/2008	1/27/2010	$ 9,465
FRESNO UNIFIED	FRESNO	Centennial Elementary	61/62166-00-0714	Reimbursement	4/23/2008	1/27/2010	$ 13,418
FRESNO UNIFIED	FRESNO	Columbia Elementary	61/62166-00-0715	Reimbursement	4/23/2008	1/27/2010	$ 15,400
FRESNO UNIFIED	FRESNO	Cooper Middle	61/62166-00-0716	Reimbursement	4/23/2008	2/24/2010	$ 33,643
FRESNO UNIFIED	FRESNO	Dailey Elementary	61/62166-00-0717	Reimbursement	4/23/2008	1/27/2010	$ 6,185
FRESNO UNIFIED	FRESNO	Del Mar Elementary	61/62166-00-0718	Reimbursement	4/23/2008	2/24/2010	$ 6,721
FRESNO UNIFIED	FRESNO	Easterby Elementary	61/62166-00-0719	Reimbursement	4/23/2008	1/27/2010	$ 6,839
FRESNO UNIFIED	FRESNO	Ericson Elementary	61/62166-00-0720	Reimbursement	4/23/2008	2/24/2010	$ 12,060
FRESNO UNIFIED	FRESNO	Ewing Elementary	61/62166-00-0721	Reimbursement	4/23/2008	2/24/2010	$ 8,551
FRESNO UNIFIED	FRESNO	Fort Miller Middle	61/62166-00-0722	Reimbursement	4/23/2008	1/27/2010	$ 24,086
FRESNO UNIFIED	FRESNO	Fremont Elementary	61/62166-00-0723	Reimbursement	4/23/2008	1/27/2010	$ 22,251
FRESNO UNIFIED	FRESNO	Fresno High	61/62166-00-0724	Reimbursement	4/23/2008	2/24/2010	$ 85,539
FRESNO UNIFIED	FRESNO	Greenberg (David L.) Elementary	61/62166-00-0725	Reimbursement	4/23/2008	1/27/2010	$ 9,211
FRESNO UNIFIED	FRESNO	Hamilton Elementary	61/62166-00-0726	Reimbursement	4/23/2008	2/24/2010	$ 17,738
FRESNO UNIFIED	FRESNO	Heaton Elementary	61/62166-00-0727	Reimbursement	4/23/2008	2/24/2010	$ 5,765
FRESNO UNIFIED	FRESNO	Hidalgo (Miguel) Elementary	61/62166-00-0728	Reimbursement	4/23/2008	1/27/2010	$ 13,563
FRESNO UNIFIED	FRESNO	Homan Elementary	61/62166-00-0729	Reimbursement	4/23/2008	2/24/2010	$ 16,415
FRESNO UNIFIED	FRESNO	Herbert Hoover High	61/62166-00-0730	Reimbursement	4/23/2008	3/24/2010	$ 48,358
FRESNO UNIFIED	FRESNO	Jefferson Elementary	61/62166-00-0731	Reimbursement	4/23/2008	1/27/2010	$ 9,290
FRESNO UNIFIED	FRESNO	King Elementary	61/62166-00-0732	Reimbursement	4/23/2008	2/24/2010	$ 9,693
FRESNO UNIFIED	FRESNO	Kings Canyon Middle	61/62166-00-0733	Reimbursement	4/23/2008	1/27/2010	$ 13,409
FRESNO UNIFIED	FRESNO	Kirk Elementary	61/62166-00-0734	Reimbursement	4/23/2008	1/27/2010	$ 9,050
FRESNO UNIFIED	FRESNO	Lane Elementary	61/62166-00-0735	Reimbursement	4/23/2008	1/27/2010	$ 30,157
FRESNO UNIFIED	FRESNO	Lawless Elementary	61/62166-00-0736	Reimbursement	4/23/2008	1/27/2010	$ 9,097
FRESNO UNIFIED	FRESNO	Leavenworth (Ann B.) Elementary	61/62166-00-0737	Reimbursement	4/23/2008	1/27/2010	$ 44,410
FRESNO UNIFIED	FRESNO	Lincoln Elementary	61/62166-00-0738	Reimbursement	4/23/2008	1/27/2010	$ 6,664
FRESNO UNIFIED	FRESNO	Lowell Elementary	61/62166-00-0739	Reimbursement	4/23/2008	1/27/2010	$ 16,426
FRESNO UNIFIED	FRESNO	Mayfair Elementary	61/62166-00-0740	Reimbursement	4/23/2008	1/27/2010	$ 16,664
FRESNO UNIFIED	FRESNO	McLane High	61/62166-00-0741	Reimbursement	4/23/2008	1/27/2010	$ 59,288
FRESNO UNIFIED	FRESNO	Muir Elementary	61/62166-00-0742	Reimbursement	4/23/2008	2/24/2010	$ 19,640
FRESNO UNIFIED	FRESNO	Norseman Elementary	61/62166-00-0743	Reimbursement	4/23/2008	1/27/2010	$ 15,063
FRESNO UNIFIED	FRESNO	Pyle Elementary	61/62166-00-0744	Reimbursement	4/23/2008	2/24/2010	$ 17,517
FRESNO UNIFIED	FRESNO	Roeding Elementary	61/62166-00-0745	Reimbursement	4/23/2008	2/24/2010	$ 16,168
FRESNO UNIFIED	FRESNO	Roosevelt High	61/62166-00-0746	Reimbursement	4/23/2008	2/24/2010	$ 44,789
FRESNO UNIFIED	FRESNO	Rowell Elementary	61/62166-00-0747	Reimbursement	4/23/2008	2/24/2010	$ 23,402
FRESNO UNIFIED	FRESNO	Scandinavian Middle	61/62166-00-0748	Reimbursement	4/23/2008	2/24/2010	$ 24,537
FRESNO UNIFIED	FRESNO	Sequoia Middle	61/62166-00-0749	Reimbursement	4/23/2008	2/24/2010	$ 37,193

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District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
FRESNO UNIFIED	FRESNO	Slater Elementary	61/62166-00-0750	Reimbursement	4/23/2008	1/27/2010	$ 9,198
FRESNO UNIFIED	FRESNO	Sunnyside High	61/62166-00-0751	Reimbursement	4/23/2008	2/24/2010	$ 41,366
FRESNO UNIFIED	FRESNO	Sunset Elementary	61/62166-00-0752	Reimbursement	4/23/2008	2/24/2010	$ 11,796
FRESNO UNIFIED	FRESNO	Tehipite Middle	61/62166-00-0753	Reimbursement	4/23/2008	2/24/2010	$ 16,779
FRESNO UNIFIED	FRESNO	Terronez (Elizabeth) Middle	61/62166-00-0754	Reimbursement	4/23/2008	2/24/2010	$ 33,161
FRESNO UNIFIED	FRESNO	Tioga Middle	61/62166-00-0755	Reimbursement	4/23/2008	3/24/2010	$ 24,295
FRESNO UNIFIED	FRESNO	Turner Elementary	61/62166-00-0756	Reimbursement	4/23/2008	3/24/2010	$ 5,923
FRESNO UNIFIED	FRESNO	Viking Elementary	61/62166-00-0757	Reimbursement	4/23/2008	3/24/2010	$ 9,037
FRESNO UNIFIED	FRESNO	Vinland Elementary	61/62166-00-0758	Reimbursement	4/23/2008	3/24/2010	$ 16,261
FRESNO UNIFIED	FRESNO	Wawona Middle	61/62166-00-0759	Reimbursement	4/23/2008	3/24/2010	$ 10,686
FRESNO UNIFIED	FRESNO	Webster Elementary	61/62166-00-0760	Reimbursement	4/23/2008	3/24/2010	$ 10,103
FRESNO UNIFIED	FRESNO	Wilson Elementary	61/62166-00-0761	Reimbursement	4/23/2008	3/24/2010	$ 13,851
FRESNO UNIFIED	FRESNO	Winchell Elementary	61/62166-00-0762	Reimbursement	4/23/2008	3/24/2010	$ 25,948
FRESNO UNIFIED	FRESNO	Wishon Elementary	61/62166-00-0763	Reimbursement	4/23/2008	3/24/2010	$ 25,412
FRESNO UNIFIED	FRESNO	Wolters Elementary	61/62166-00-0764	Reimbursement	4/23/2008	3/24/2010	$ 6,541
FRESNO UNIFIED	FRESNO	Yokomi (Akira) Elementary	61/62166-00-0765	Reimbursement	4/23/2008	3/24/2010	$ 7,053
FRESNO UNIFIED	FRESNO	Yosemite Middle	61/62166-00-0766	Reimbursement	4/23/2008	3/24/2010	$ 65,653
PASADENA UNIFIED	LOS ANGELES	Muir High	61/64881-00-0038	Grant	4/23/2008	8/25/2010	$ 50,685
PASADENA UNIFIED	LOS ANGELES	Washington Middle	61/64881-00-0039	Grant	4/23/2008	8/4/2010	$ 59,993
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0021	Grant	4/24/2008	8/25/2010	$ 307,976
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0022	Grant	4/24/2008	8/25/2010	$ 162,573
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0023	Grant	4/24/2008	8/4/2010	$ 51,040
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0024	Grant	4/24/2008	8/25/2010	$ 369,998
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0025	Grant	4/24/2008	8/25/2010	$ 302,186
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0026	Grant	4/24/2008	8/4/2010	$ 120,737
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0027	Grant	4/24/2008	8/4/2010	$ 318,551
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0028	Grant	4/24/2008	8/25/2010	$ 385,374
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0029	Grant	4/24/2008	11/3/2010	$ 3,305,834
LENNOX ELEMENTARY	LOS ANGELES	Moffett Elementary	61/64709-00-0018	Reimbursement	4/24/2008	8/4/2010	$ 38,850
LENNOX ELEMENTARY	LOS ANGELES	Moffett Elementary	61/64709-00-0019	Reimbursement	4/24/2008	8/4/2010	$ 87,506
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0027	Grant	4/24/2008	8/25/2010	$ 569,377
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0028	Grant	4/24/2008	8/25/2010	$ 203,553
MORENO VALLEY UNIFIED	RIVERSIDE	Badger Springs Middle	61/67124-00-0029	Grant	4/24/2008	10/6/2010	$ 373,668
MORENO VALLEY UNIFIED	RIVERSIDE	Badger Springs Middle	61/67124-00-0030	Grant	4/24/2008	10/6/2010	$ 123,085
MORENO VALLEY UNIFIED	RIVERSIDE	Serrano Elementary	61/67124-00-0031	Grant	4/24/2008	10/6/2010	$ 578,305
MORENO VALLEY UNIFIED	RIVERSIDE	Serrano Elementary	61/67124-00-0032	Grant	4/24/2008	10/6/2010	$ 81,485
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Elementary	61/67124-00-0033	Grant	4/24/2008	8/25/2010	$ 321,380
MORENO VALLEY UNIFIED	RIVERSIDE	Honey Hollow Elementary	61/67124-00-0034	Grant	4/24/2008	8/25/2010	$ 366,333
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0035	Grant	4/24/2008	8/4/2010	$ 419,913
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0128	Reimbursement	4/24/2008	8/25/2010	$ 7,582
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0129	Reimbursement	4/24/2008	8/25/2010	$ 9,238
CUTLER-OROSI JOINT UNIFIED	TULARE	Cutler Elementary	61/71860-00-0130	Reimbursement	4/24/2008	8/25/2010	$ 5,038
GOLDEN PLAINS UNIFIED	FRESNO	Tranquillity Elementary	61/75234-00-0026	Grant	4/24/2008	8/4/2010	$ 11,875
GOLDEN PLAINS UNIFIED	FRESNO	Tranquillity Elementary	61/75234-00-0027	Grant	4/24/2008	8/25/2010	$ 177,492
GOLDEN PLAINS UNIFIED	FRESNO	San Joaquin Elementary	61/75234-00-0028	Grant	4/24/2008	8/4/2010	$ 6,069

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MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0036	Grant	4/25/2008	8/25/2010	$ 487,655
SACRAMENTO CITY UNIFIED	SACRAMENTO	Fruit Ridge Elementary	61/67439-00-0135	Grant	4/25/2008	10/6/2010	$ 518,510
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0136	Grant	4/25/2008	10/6/2010	$ 73,756
SACRAMENTO CITY UNIFIED	SACRAMENTO	Rosa Parks Middle	61/67439-00-0137	Grant	4/25/2008	10/6/2010	$ 9,694
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bacon (Fern) Middle	61/67439-00-0138	Grant	4/25/2008	10/6/2010	$ 29,001
YUCAIPA-CALIMESA JOINT UNIFIED	SAN BERNARDIN(	Yucaipa Elementary	61/67959-00-0001	Reimbursement	4/25/2008	10/6/2010	$ 234,409
CHULA VISTA ELEMENTARY	SAN DIEGO	Castle Park Elementary	61/68023-00-0011	Reimbursement	4/25/2008	8/4/2010	$ 5,426
GONZALES UNIFIED	MONTEREY	Fairview Middle	61/75473-00-0001	Grant	4/25/2008	8/25/2010	$ 749,346
GONZALES UNIFIED	MONTEREY	Gonzales High	61/75473-00-0002	Grant	4/25/2008	8/25/2010	$ 569,041
GONZALES UNIFIED	MONTEREY	La Gloria Elementary	61/75473-00-0003	Grant	4/25/2008	8/25/2010	$ 194,151
SANTA ANA UNIFIED	ORANGE	Franklin Elementary	61/66670-00-0059	Grant	4/28/2008	8/4/2010	$ 67,441
SACRAMENTO CITY UNIFIED	SACRAMENTO	Harkness (H.W.) Elementary	61/67439-00-0139	Grant	4/28/2008	8/4/2010	$ 6,092
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0140	Grant	4/28/2008	8/25/2010	$ 2,249,560
SAN DIEGO UNIFIED	SAN DIEGO	Montgomery Middle	61/68338-00-0258	Reimbursement	4/28/2008	8/4/2010	$ 25,221
SAN DIEGO UNIFIED	SAN DIEGO	Montgomery Middle	61/68338-00-0259	Reimbursement	4/28/2008	8/4/2010	$ 20,312
SAN DIEGO UNIFIED	SAN DIEGO	Mission Bay Senior High	61/68338-00-0260	Reimbursement	4/28/2008	8/4/2010	$ 27,360
SAN DIEGO UNIFIED	SAN DIEGO	Mission Bay Senior High	61/68338-00-0261	Reimbursement	4/28/2008	8/4/2010	$ 26,116
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0131	Reimbursement	4/28/2008	8/4/2010	$ 23,675
RIVER DELTA JOINT UNIFIED	SACRAMENTO	Walnut Grove Elementary	61/67413-00-0010	Grant	4/29/2008	8/4/2010	$ 47,667
SACRAMENTO CITY UNIFIED	SACRAMENTO	Rosa Parks Middle (formerly C.M.Goethe)	61/67439-00-0141	Grant	4/29/2008	8/25/2010	$ 1,400,328
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sloat (John D.) Elementary	61/67439-00-0142	Grant	4/29/2008	8/25/2010	$ 105,513
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0143	Grant	4/29/2008	8/4/2010	$ 28,152
WEST PARK ELEMENTARY	FRESNO	West Park Elementary	61/62539-00-0005	Reimbursement	4/30/2008	8/4/2010	$ 10,710
ORANGE UNIFIED	ORANGE	Yorba Middle	61/66621-00-0067	Grant	4/30/2008	8/4/2010	$ 137,397
SANTA ANA UNIFIED	ORANGE	McFadden Intermediate	61/66670-00-0060	Grant	4/30/2008	10/6/2010	$ 78,622
DESERT SANDS UNIFIED	RIVERSIDE	Indio High	61/67058-00-0004	Grant	4/30/2008	10/6/2010	$ 165,666
DESERT SANDS UNIFIED	RIVERSIDE	Indio High	61/67058-00-0005	Grant	4/30/2008	10/6/2010	$ 235,879
DESERT SANDS UNIFIED	RIVERSIDE	Indio High	61/67058-00-0006	Grant	4/30/2008	10/6/2010	$ 547,793
DESERT SANDS UNIFIED	RIVERSIDE	Indio High	61/67058-00-0007	Grant	4/30/2008	10/6/2010	$ 53,660
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0037	Grant	4/30/2008	10/6/2010	$ 1,700,818
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0038	Grant	4/30/2008	10/6/2010	$ 1,508,405
TULARE CITY ELEMENTARY	TULARE	Lincoln Elementary	61/72231-00-0001	Grant	4/30/2008	10/6/2010	$ 50,215
TULARE CITY ELEMENTARY	TULARE	Roosevelt Elementary	61/72231-00-0002	Grant	4/30/2008	10/6/2010	$ 126,408
TULARE CITY ELEMENTARY	TULARE	Lincoln Elementary	61/72231-00-0003	Grant	4/30/2008	10/6/2010	$ 246,159
COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementary	61/73437-00-0083	Grant	4/30/2008	10/6/2010	$ 235,905
COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementary	61/73437-00-0084	Grant	4/30/2008	10/6/2010	$ 301,983
COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementary	61/73437-00-0085	Grant	4/30/2008	10/6/2010	$ 203,330
COMPTON UNIFIED	LOS ANGELES	Longfellow Elementary	61/73437-00-0086	Grant	4/30/2008	10/6/2010	$ 353,179
COMPTON UNIFIED	LOS ANGELES	Longfellow Elementary	61/73437-00-0087	Grant	4/30/2008	10/6/2010	$ 290,630
COMPTON UNIFIED	LOS ANGELES	Roosevelt Elementary	61/73437-00-0088	Grant	4/30/2008	10/6/2010	$ 571,579
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0089	Grant	4/30/2008	10/6/2010	$ 280,095
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0090	Grant	4/30/2008	10/6/2010	$ 340,645
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0091	Grant	4/30/2008	10/6/2010	$ 301,162
COMPTON UNIFIED	LOS ANGELES	Rosecrans Elementary	61/73437-00-0092	Grant	4/30/2008	10/6/2010	$ 140,127
COMPTON UNIFIED	LOS ANGELES	Willard (Frances) Elementary	61/73437-00-0093	Grant	4/30/2008	10/6/2010	$ 16,075

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COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementar	61/73437-00-0216	Grant	4/30/2008	10/6/2010	$ 5,418
GOLDEN PLAINS UNIFIED	FRESNO	San Joaquin Elementary	61/75234-00-0029	Grant	4/30/2008	8/25/2010	$ 477,074
OAKLAND UNIFIED	ALAMEDA	Madison Middle	61/61259-00-0042	Reimbursement	5/1/2008	11/3/2010	$ 20,039
OAKLAND UNIFIED	ALAMEDA	LIFE Academy	61/61259-00-0043	Reimbursement	5/1/2008	11/3/2010	$ 5,135
OAKLAND UNIFIED	ALAMEDA	Stonehurst Elementary	61/61259-00-0044	Reimbursement	5/1/2008	11/3/2010	$ 15,353
OAKLAND UNIFIED	ALAMEDA	Education for Change at Cox Elementary	61/61259-00-0045	Reimbursement	5/1/2008	11/3/2010	$ 9,523
OAKLAND UNIFIED	ALAMEDA	King Estates Middle	61/61259-00-0046	Reimbursement	5/1/2008	11/3/2010	$ 10,293
ARENA UNION ELEMENTARY	MENDOCINO	Arena Elementary	61/65557-00-0006	Grant	5/1/2008	11/3/2010	$ 28,481
PLACENTIA-YORBA LINDA UNIFIED	ORANGE	Ruby Drive Elementary	61/66647-00-0011	Reimbursement	5/2/2008	11/3/2010	$ 46,539
STOCKTON CITY UNIFIED	SAN JOAQUIN	Franklin Senior High	61/68676-00-0050	Reimbursement	5/2/2008	11/3/2010	$ 147,564
COMPTON UNIFIED	LOS ANGELES	Willowbrook Middle	61/73437-00-0094	Grant	5/2/2008	11/3/2010	$ 260,725
COMPTON UNIFIED	LOS ANGELES	Lincoln Elementary	61/73437-00-0095	Grant	5/2/2008	11/3/2010	$ 268,345
COMPTON UNIFIED	LOS ANGELES	Lincoln Elementary	61/73437-00-0096	Grant	5/2/2008	11/3/2010	$ 289,616
COMPTON UNIFIED	LOS ANGELES	Willowbrook Middle	61/73437-00-0217	Grant	5/2/2008	11/3/2010	$ 48,695
LANCASTER ELEMENTARY	LOS ANGELES	Sunnydale Elementary	61/64667-00-0003	Reimbursement	5/5/2008	11/3/2010	$ 344,046
LANCASTER ELEMENTARY	LOS ANGELES	Desert View Elementary	61/64667-00-0004	Reimbursement	5/5/2008	11/3/2010	$ 290,720
LYNWOOD UNIFIED	LOS ANGELES	Lynwood Middle	61/64774-00-0055	Grant	5/5/2008	11/3/2010	$ 64,590
PLANADA ELEMENTARY	MERCED	Planada Elementary	61/65821-00-0005	Grant	5/5/2008	11/3/2010	$ 223,578
CHULA VISTA ELEMENTARY	SAN DIEGO	Lauderbach (J. Calvin) Elementary	61/68023-00-0012	Reimbursement	5/5/2008	11/3/2010	$ 21,170
SAN DIEGO UNIFIED	SAN DIEGO	Morse Senior High	61/68338-00-0262	Reimbursement	5/5/2008	11/3/2010	$ 88,114
SAN DIEGO UNIFIED	SAN DIEGO	Morse Senior High	61/68338-00-0263	Reimbursement	5/5/2008	11/3/2010	$ 90,839
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0132	Grant	5/5/2008	11/3/2010	$ 392,739
GONZALES UNIFIED	MONTEREY	Gonzales High	61/75473-00-0004	Grant	5/5/2008	11/3/2010	$ 1,107,974
GONZALES UNIFIED	MONTEREY	Gonzales High	61/75473-00-0005	Reimbursement	5/5/2008	11/3/2010	$ 36,715
PARLIER UNIFIED	FRESNO	Martinez (John C.) Elementary	61/62364-00-0011	Grant	5/6/2008	12/15/2010	$ 490,394
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0016	Grant	5/6/2008	11/3/2010	$ 562,668
SALINAS CITY ELEMENTARY	MONTEREY	Roosevelt Elementary	61/66142-00-0017	Grant	5/6/2008	11/3/2010	$ 546,769
SANTA ROSA ELEMENTARY	SONOMA	Santa Rosa Charter School for the Arts	61/70912-00-0025	Grant	5/6/2008	11/3/2010	$ 292,119
SANTA ROSA HIGH	SONOMA	Cook (Lawrence) Middle	61/70920-00-0004	Reimbursement	5/6/2008	12/15/2010	$ 317,368
OROVILLE CITY ELEMENTARY	BUTTE	Wyandotte Avenue Elementary	61/61507-00-0002	Reimbursement	5/7/2008	12/15/2010	$ 83,637
OROVILLE CITY ELEMENTARY	BUTTE	Oakdale Heights Elementary	61/61507-00-0003	Reimbursement	5/7/2008	11/3/2010	$ 32,135
HANFORD ELEMENTARY	KINGS	King (Martin Luther, Jr.) Elementary	61/63917-00-0016	Grant	5/7/2008	11/3/2010	$ 840,825
PERRIS ELEMENTARY	RIVERSIDE	Perris Elementary	61/67199-00-0002	Reimbursement	5/7/2008	12/15/2010	$ 93,050
PERRIS ELEMENTARY	RIVERSIDE	Good Hope Elementary	61/67199-00-0003	Reimbursement	5/7/2008	12/15/2010	$ 175,877
PERRIS ELEMENTARY	RIVERSIDE	Nan Sanders Elementary	61/67199-00-0004	Reimbursement	5/7/2008	11/3/2010	$ 154,957
PERRIS ELEMENTARY	RIVERSIDE	Palms Elementary	61/67199-00-0005	Reimbursement	5/7/2008	11/3/2010	$ 169,950
PERRIS ELEMENTARY	RIVERSIDE	Park Avenue Elementary	61/67199-00-0006	Reimbursement	5/7/2008	12/15/2010	$ 134,240
SACRAMENTO CITY UNIFIED	SACRAMENTO	Smith (Jedediah) Elementary	61/67439-00-0144	Grant	5/7/2008	11/3/2010	$ 25,072
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sloat (John D.) Elementary	61/67439-00-0145	Grant	5/7/2008	11/3/2010	$ 29,815
SACRAMENTO CITY UNIFIED	SACRAMENTO	Morse (John F.) Elementary	61/67439-00-0146	Grant	5/7/2008	11/3/2010	$ 39,640
SACRAMENTO CITY UNIFIED	SACRAMENTO	Rosa Parks Middle	61/67439-00-0147	Grant	5/7/2008	11/3/2010	$ 19,090
SAN DIEGO UNIFIED	SAN DIEGO	Perkins Elementary	61/68338-00-0264	Reimbursement	5/7/2008	12/15/2010	$ 17,382
SAN DIEGO UNIFIED	SAN DIEGO	Perkins Elementary	61/68338-00-0265	Reimbursement	5/7/2008	11/3/2010	$ 14,956
CASCADE UNION ELEMENTARY	SHASTA	Verde Vale Elementary	61/69914-00-0016	Reimbursement	5/7/2008	12/15/2010	$ 82,187
WASHINGTON UNIFIED	YOLO	Riverbank Elementary	61/72694-00-0023	Grant	5/7/2008	12/15/2010	$ 823,976

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SACRAMENTO CITY UNIFIED	SACRAMENTO	Tahoe Elementary	61/67439-00-0150	Grant	5/8/2008	12/15/2010	$ 406,285
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0152	Grant	5/8/2008	12/15/2010	$ 502,689
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0154	Grant	5/8/2008	12/15/2010	$ 89,946
SACRAMENTO CITY UNIFIED	SACRAMENTO	Capital City (Independent Study)	61/67439-00-0157	Grant	5/8/2008	12/15/2010	$ 49,261
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0160	Grant	5/8/2008	12/15/2010	$ 104,781
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0161	Grant	5/8/2008	12/15/2010	$ 101,760
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0162	Grant	5/8/2008	12/15/2010	$ 64,327
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0163	Grant	5/8/2008	12/15/2010	$ 48,780
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0164	Grant	5/8/2008	12/15/2010	$ 163,952
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Slonaker (Harry) Elementary	61/69369-00-0003	Grant	5/8/2008	12/15/2010	$ 29,559
COMPTON UNIFIED	LOS ANGELES	Anderson Elementary	61/73437-00-0097	Grant	5/8/2008	12/15/2010	$ 8,793
COMPTON UNIFIED	LOS ANGELES	Bunche Middle	61/73437-00-0098	Grant	5/8/2008	12/15/2010	$ 212,855
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0100	Grant	5/8/2008	12/15/2010	$ 119,423
COMPTON UNIFIED	LOS ANGELES	Anderson Elementary	61/73437-00-0218	Grant	5/8/2008	12/15/2010	$ 118,323
COMPTON UNIFIED	LOS ANGELES	Anderson Elementary	61/73437-00-0219	Grant	5/8/2008	12/15/2010	$ 34,295
COMPTON UNIFIED	LOS ANGELES	Anderson Elementary	61/73437-00-0220	Grant	5/8/2008	12/15/2010	$ 61,867
COMPTON UNIFIED	LOS ANGELES	Anderson Elementary	61/73437-00-0221	Grant	5/8/2008	12/15/2010	$ 18,433
LODI UNIFIED	SAN JOAQUIN	Live Oak Elementary	61/68585-00-0076	Reimbursement	5/9/2008	12/15/2010	$ 52,374
LODI UNIFIED	SAN JOAQUIN	Live Oak Elementary	61/68585-00-0077	Grant	5/9/2008	12/15/2010	$ 153,211
LODI UNIFIED	SAN JOAQUIN	Live Oak Elementary	61/68585-00-0078	Reimbursement	5/9/2008	12/15/2010	$ 242,275
COMPTON UNIFIED	LOS ANGELES	Bunche Middle	61/73437-00-0101	Grant	5/9/2008	12/15/2010	$ 308,080
COMPTON UNIFIED	LOS ANGELES	Whaley Middle	61/73437-00-0102	Grant	5/9/2008	12/15/2010	$ 178,220
OAKLAND UNIFIED	ALAMEDA	Fremont Senior High	61/61259-00-0047	Reimbursement	5/12/2008	12/15/2010	$ 12,352
MORENO VALLEY UNIFIED	RIVERSIDE	Badger Springs Middle	61/67124-00-0041	Grant	5/12/2008	12/15/2010	$ 286,941
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0042	Grant	5/12/2008	12/15/2010	$ 350,429
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0045	Grant	5/12/2008	12/15/2010	$ 284,815
SAN JACINTO UNIFIED	RIVERSIDE	Monte Vista Middle	61/67249-00-0014	Grant	5/12/2008	12/15/2010	$ 530,076
ORANGE UNIFIED	ORANGE	Lampson Elementary	61/66621-00-0068	Reimbursement	5/15/2008	12/15/2010	$ 19,682
MORENO VALLEY UNIFIED	RIVERSIDE	Honey Hollow Elementary	61/67124-00-0051	Grant	5/16/2008	12/15/2010	$ 186,055
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Arbuckle (Clyde) Elementary	61/69369-00-0004	Grant	5/16/2008	12/15/2010	$ 482,353
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0115	Grant	5/16/2008	12/15/2010	$ 41,286
COMPTON UNIFIED	LOS ANGELES	Enterprise Middle	61/73437-00-0116	Grant	5/16/2008	12/15/2010	$ 21,799
GOLDEN PLAINS UNIFIED	FRESNO	San Joaquin Elementary	61/75234-00-0030	Grant	5/16/2008	12/15/2010	$ 168,721
GOLDEN PLAINS UNIFIED	FRESNO	San Joaquin Elementary	61/75234-00-0031	Grant	5/16/2008	12/15/2010	$ 11,189
LYNWOOD UNIFIED	LOS ANGELES	Lynwood Middle	61/64774-00-0027	Grant	5/19/2008	12/15/2010	$ 159,488
LYNWOOD UNIFIED	LOS ANGELES	Lynwood Middle	61/64774-00-0028	Grant	5/19/2008	12/15/2010	$ 308,180
LYNWOOD UNIFIED	LOS ANGELES	Lynwood Middle	61/64774-00-0029	Grant	5/19/2008	12/15/2010	$ 208,603
LYNWOOD UNIFIED	LOS ANGELES	Lynwood Middle	61/64774-00-0030	Grant	5/19/2008	12/15/2010	$ 260,742
LYNWOOD UNIFIED	LOS ANGELES	Helen Keller Elementary	61/64774-00-0031	Grant	5/19/2008	12/15/2010	$ 46,662
LYNWOOD UNIFIED	LOS ANGELES	Roosevelt Elementary	61/64774-00-0032	Grant	5/19/2008	12/15/2010	$ 254,385
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	Buren (Mary) Elementary	61/69203-00-0012	Grant	5/19/2008	12/15/2010	$ 442,254
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0013	Grant	5/19/2008	12/15/2010	$ 21,836
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0014	Grant	5/19/2008	12/15/2010	$ 8,345
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0015	Grant	5/19/2008	12/15/2010	$ 25,010
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0016	Grant	5/19/2008	12/15/2010	$ 911,252

EMERGENCY REPAIR PROGRAM
UNFUNDED APPROVALS as of December 15, 2010

District	County	Site	Application Number	FundinGrant Type	OPSC Received	SAB Date	Unfunded Approval
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0017	Grant	5/19/2008	12/15/2010	$ 167,279
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0018	Grant	5/19/2008	12/15/2010	$ 210,909
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0019	Grant	5/19/2008	12/15/2010	$ 60,398
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	Buren (Mary) Elementary	61/69203-00-0020	Grant	5/19/2008	12/15/2010	$ 63,006
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Baker Elementary	61/64816-00-0014	Grant	5/20/2008	12/15/2010	$ 902,718
WHITTIER CITY ELEMENTARY	LOS ANGELES	Jackson (Lydia) Elementary	61/65110-00-0044	Reimbursement	5/22/2008	12/15/2010	$ 8,179
WHITTIER CITY ELEMENTARY	LOS ANGELES	Longfellow Elementary	61/65110-00-0045	Reimbursement	5/22/2008	12/15/2010	$ 15,439
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Rogers (William R.) Elementary	61/69369-00-0005	Grant	5/22/2008	12/15/2010	$ 489,433
TOTAL FUNDING PENDING							**$ 177,125,140**

INFORMATION ITEM

EMERGENCY REPAIR PROGRAM
OFFICE OF PUBLIC SCHOOL CONSTRUCTION FUNDING WORKLOAD LISTING
(As of December 28, 2010)

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0047	5/14/2008	Processing	$ 901,612
SANTA ANA UNIFIED	ORANGE	Century High	61/66670-00-0067	5/15/2008	Processing	$ 9,321,207
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0048	5/19/2008	Processing	$ 4,783,882
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0049	5/19/2008	Processing	$ 2,468,644
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0054	5/20/2008	Processing	$ 1,931,101
SAN DIEGO UNIFIED	SAN DIEGO	Hoover Senior High	61/68338-00-0268	5/21/2008	Processing	$ 2,296,662
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0055	5/22/2008	Processing	$ 6,477,240
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0056	5/22/2008	Processing	$ 3,368,855
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bear Flag Elementary	61/67439-00-0177	5/23/2008	Processing	$ 31,304
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0151	5/27/2008	Processing	$ 340,222
PATTERSON JOINT UNIFIED	STANISLAUS	Grayson Charter	61/71217-00-0004	5/27/2008	Processing	$ 22,450
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0005	5/27/2008	Processing	$ 140,629
SANTA ANA UNIFIED	ORANGE	Franklin Elementary	61/66670-00-0068	5/27/2008	Processing	$ 4,880,867
SANTA ANA UNIFIED	ORANGE	Martin Elementary	61/66670-00-0069	5/27/2008	Processing	$ 4,865,301
SANTA ANA UNIFIED	ORANGE	Sierra Intermediate	61/66670-00-0070	5/27/2008	Processing	$ 6,131,357
SANTA ANA UNIFIED	ORANGE	McFadden Intermediate	61/66670-00-0071	5/27/2008	Processing	$ 4,783,882
SHANDON JOINT UNIFIED	SAN LUIS OBISPO	Shandon High/Middle	61/68833-00-0002	5/27/2008	Processing	$ 67,500
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0057	5/30/2008	Processing	$ 2,505,698
MORENO VALLEY UNIFIED	RIVERSIDE	Serrano Elementary	61/67124-00-0058	5/30/2008	Processing	$ 4,620,717
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	George (Joseph) Middle	61/69369-00-0008	6/2/2008	Pending	$ 135,710
BAKERSFIELD CITY ELEMENTARY	KERN	Wayside Elementary	61/63321-00-0014	6/2/2008	Pending	$ 5,457
COMPTON UNIFIED	LOS ANGELES	Willowbrook Middle	61/73437-00-0181	6/2/2008	Pending	$ 802,463
COMPTON UNIFIED	LOS ANGELES	Willowbrook Middle	61/73437-00-0182	6/2/2008	Pending	$ 98,551
COMPTON UNIFIED	LOS ANGELES	Washington Elementary	61/73437-00-0183	6/2/2008	Pending	$ 602,564
COMPTON UNIFIED	LOS ANGELES	Willard (Frances) Elementary	61/73437-00-0184	6/2/2008	Pending	$ 77,478
COMPTON UNIFIED	LOS ANGELES	Walton Middle	61/73437-00-0185	6/2/2008	Pending	$ 92,965
COMPTON UNIFIED	LOS ANGELES	Walton Middle	61/73437-00-0186	6/2/2008	Pending	$ 609,697
COMPTON UNIFIED	LOS ANGELES	Walton Middle	61/73437-00-0187	6/2/2008	Pending	$ 1,493,381
COMPTON UNIFIED	LOS ANGELES	Whaley Middle	61/73437-00-0188	6/2/2008	Pending	$ 2,282,658
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0189	6/2/2008	Pending	$ 90,342
COMPTON UNIFIED	LOS ANGELES	Tibby Elementary	61/73437-00-0190	6/2/2008	Pending	$ 981,442
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0191	6/2/2008	Pending	$ 1,134,635
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0192	6/2/2008	Pending	$ 261,959
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0193	6/2/2008	Pending	$ 98,551
COMPTON UNIFIED	LOS ANGELES	Roosevelt Elementary	61/73437-00-0194	6/2/2008	Pending	$ 557,545
COMPTON UNIFIED	LOS ANGELES	Rosecrans Elementary	61/73437-00-0195	6/2/2008	Pending	$ 424,470
COMPTON UNIFIED	LOS ANGELES	McKinley Elementary	61/73437-00-0196	6/2/2008	Pending	$ 331,076
COMPTON UNIFIED	LOS ANGELES	McKinley Elementary	61/73437-00-0197	6/2/2008	Pending	$ 342,330
COMPTON UNIFIED	LOS ANGELES	McKinley Elementary	61/73437-00-0198	6/2/2008	Pending	$ 596,581
COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementary	61/73437-00-0199	6/2/2008	Pending	$ 308,220
COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementary	61/73437-00-0200	6/2/2008	Pending	$ 216,659
COMPTON UNIFIED	LOS ANGELES	Enterprise Middle	61/73437-00-0201	6/2/2008	Pending	$ 98,551
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0202	6/2/2008	Pending	$ 324,820
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0203	6/2/2008	Pending	$ 274,989
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0001	6/2/2008	Pending	$ 191,598
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0002	6/2/2008	Pending	$ 133,142
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0003	6/2/2008	Pending	$ 101,492
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0004	6/2/2008	Pending	$ 163,145
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0005	6/2/2008	Pending	$ 70,533
SACRAMENTO CITY UNIFIED	SACRAMENTO	Genesis High	61/67439-00-0197	6/2/2008	Pending	$ 433,461
SACRAMENTO CITY UNIFIED	SACRAMENTO	Oak Ridge Elementary	61/67439-00-0198	6/2/2008	Pending	$ 92,275
MORENO VALLEY UNIFIED	RIVERSIDE	Vista del Lago High	61/67124-00-0059	6/3/2008	Pending	$ 9,416
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0060	6/3/2008	Pending	$ 15,484
MORENO VALLEY UNIFIED	RIVERSIDE	Serrano Elementary	61/67124-00-0061	6/3/2008	Pending	$ 10,955
MORENO VALLEY UNIFIED	RIVERSIDE	Mountain View Middle	61/67124-00-0062	6/3/2008	Pending	$ 13,359
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0063	6/3/2008	Pending	$ 14,382
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0064	6/3/2008	Pending	$ 156,319
MORENO VALLEY UNIFIED	RIVERSIDE	Landmark Middle	61/67124-00-0065	6/3/2008	Pending	$ 9,018
MORENO VALLEY UNIFIED	RIVERSIDE	Honey Hollow Elementary	61/67124-00-0066	6/3/2008	Pending	$ 5,200
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0067	6/3/2008	Pending	$ 116,357
MORENO VALLEY UNIFIED	RIVERSIDE	Cloverdale Elementary	61/67124-00-0068	6/3/2008	Pending	$ 24,981
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0069	6/3/2008	Pending	$ 6,011
MORENO VALLEY UNIFIED	RIVERSIDE	Badger Springs Middle	61/67124-00-0070	6/3/2008	Pending	$ 47,901
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0071	6/3/2008	Pending	$ 1,871
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0072	6/3/2008	Pending	$ 1,057,455
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0073	6/3/2008	Pending	$ 874,769
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0074	6/3/2008	Pending	$ 1,044,804
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0075	6/3/2008	Pending	$ 4,397,261
HAMILTON UNION ELEMENTARY	GLENN	Hamilton Elementary	61/62570-00-0003	6/4/2008	Pending	$ 22,507
JURUPA UNIFIED	RIVERSIDE	Arbuckle (Ina) Elementary	61/67090-00-0211	6/4/2008	Pending	$ 35,933
JURUPA UNIFIED	RIVERSIDE	Arbuckle (Ina) Elementary	61/67090-00-0212	6/4/2008	Pending	$ 7,639
JURUPA UNIFIED	RIVERSIDE	Rustic Lane Elementary	61/67090-00-0213	6/4/2008	Pending	$ 3,456
JURUPA UNIFIED	RIVERSIDE	Glen Avon Elementary	61/67090-00-0214	6/4/2008	Pending	$ 2,647
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Cogswell Elementary	61/64816-00-0015	6/4/2008	Pending	$ 766,719
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Madrid (Alfred S.) Middle	61/64816-00-0016	6/4/2008	Pending	$ 712,242
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Kranz (Charles T.) Intermediate	61/64816-00-0017	6/4/2008	Pending	$ 1,180,775
ONTARIO-MONTCLAIR ELEMENTARY	SAN BERNARDINO	Kingsley Elementary	61/67819-00-0103	6/4/2008	Pending	$ 110,500
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0199	6/4/2008	Pending	$ 2,961,279

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wood (Will C.) Middle	61/67439-00-0200	6/4/2008	Pending	$ 20,832
SACRAMENTO CITY UNIFIED	SACRAMENTO	Still (John H.) Elementary	61/67439-00-0201	6/4/2008	Pending	$ 1,157,130
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0202	6/4/2008	Pending	$ 1,105,084
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0203	6/4/2008	Pending	$ 218,695
SACRAMENTO CITY UNIFIED	SACRAMENTO	Hopkins (Mark) Elementary	61/67439-00-0204	6/4/2008	Pending	$ 907,130
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wood (Will C.) Middle	61/67439-00-0205	6/4/2008	Pending	$ 9,486
SACRAMENTO CITY UNIFIED	SACRAMENTO	Hopkins (Mark) Elementary	61/67439-00-0206	6/4/2008	Pending	$ 22,373
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0207	6/4/2008	Pending	$ 176,143
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Goss (Mildred) Elementary	61/69369-00-0009	6/5/2008	Pending	$ 16,490
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Hubbard (O.S.) Elementary	61/69369-00-0010	6/5/2008	Pending	$ 195,286
COMPTON UNIFIED	LOS ANGELES	Bunche Middle	61/73437-00-0204	6/5/2008	Pending	$ 62,750
COMPTON UNIFIED	LOS ANGELES	Carver Elementary	61/73437-00-0205	6/5/2008	Pending	$ 68,931
COMPTON UNIFIED	LOS ANGELES	Compton High	61/73437-00-0206	6/5/2008	Pending	$ 1,192,730
COMPTON UNIFIED	LOS ANGELES	Emerson Elementary	61/73437-00-0207	6/5/2008	Pending	$ 49,368
COMPTON UNIFIED	LOS ANGELES	Jefferson Elementary	61/73437-00-0208	6/5/2008	Pending	$ 613,429
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bonnheim (Joseph) Elementary	61/67439-00-0208	6/5/2008	Pending	$ 77,515
SACRAMENTO CITY UNIFIED	SACRAMENTO	Baker (Ethel I.) Elementary	61/67439-00-0209	6/5/2008	Pending	$ 1,021,390
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burnett (Peter) Elementary	61/67439-00-0210	6/5/2008	Pending	$ 301,827
SACRAMENTO CITY UNIFIED	SACRAMENTO	Freeport Elementary	61/67439-00-0211	6/5/2008	Pending	$ 180,556
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0212	6/5/2008	Pending	$ 141,472
SACRAMENTO CITY UNIFIED	SACRAMENTO	Oak Ridge Elementary	61/67439-00-0213	6/5/2008	Pending	$ 55,919
SACRAMENTO CITY UNIFIED	SACRAMENTO	Phillips (Ethel) Elementary	61/67439-00-0214	6/5/2008	Pending	$ 1,456,665
SACRAMENTO CITY UNIFIED	SACRAMENTO	Woodbine Elementary	61/67439-00-0215	6/5/2008	Pending	$ 33,457
SACRAMENTO CITY UNIFIED	SACRAMENTO	Woodbine Elementary	61/67439-00-0216	6/5/2008	Pending	$ 261,759
SACRAMENTO CITY UNIFIED	SACRAMENTO	Woodbine Elementary	61/67439-00-0217	6/5/2008	Pending	$ 110,503
SACRAMENTO CITY UNIFIED	SACRAMENTO	Carson (Kit) Middle	61/67439-00-0218	6/5/2008	Pending	$ 553,625
SACRAMENTO CITY UNIFIED	SACRAMENTO	Baker (Ethel I.) Elementary	61/67439-00-0219	6/5/2008	Pending	$ 175,488
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bowling Green Elementary (Charter)	61/67439-00-0220	6/5/2008	Pending	$ 180,395
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0022	6/6/2008	Pending	$ 56,274
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0023	6/6/2008	Pending	$ 20,635
GUADALUPE UNION ELEMENTARY	SANTA BARBARA	McKenzie (Kermit) Junior High	61/69203-00-0024	6/6/2008	Pending	$ 5,218
ONTARIO-MONTCLAIR ELEMENTARY	SAN BERNARDINO	Lehigh Elementary	61/67819-00-0104	6/6/2008	Pending	$ 329,150
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0110	6/6/2008	Pending	$ 1,485,577
SACRAMENTO CITY UNIFIED	SACRAMENTO	Still (John H.) Elementary	61/67439-00-0221	6/6/2008	Pending	$ 315,783
SACRAMENTO CITY UNIFIED	SACRAMENTO	Phillips (Ethel) Elementary	61/67439-00-0222	6/6/2008	Pending	$ 91,695
SACRAMENTO CITY UNIFIED	SACRAMENTO	Kenny (Father Keith B.) Elementary	61/67439-00-0223	6/6/2008	Pending	$ 130,863
SACRAMENTO CITY UNIFIED	SACRAMENTO	Kemble (Edward) Elementary	61/67439-00-0224	6/6/2008	Pending	$ 63,164
SACRAMENTO CITY UNIFIED	SACRAMENTO	Huntington (Collis P.) Elementary	61/67439-00-0225	6/6/2008	Pending	$ 112,930
SACRAMENTO CITY UNIFIED	SACRAMENTO	Carson (Kit) Middle	61/67439-00-0226	6/6/2008	Pending	$ 195,515
SACRAMENTO CITY UNIFIED	SACRAMENTO	Carson (Kit) Middle	61/67439-00-0227	6/6/2008	Pending	$ 5,462
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burnett (Peter) Elementary	61/67439-00-0228	6/6/2008	Pending	$ 438,334
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burnett (Peter) Elementary	61/67439-00-0229	6/6/2008	Pending	$ 1,319,011
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0230	6/6/2008	Pending	$ 189,461
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bonnheim (Joseph) Elementary	61/67439-00-0231	6/6/2008	Pending	$ 350,162
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wire (Clayton B.) Elementary	61/67439-00-0232	6/6/2008	Pending	$ 203,140
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0233	6/6/2008	Pending	$ 227,585
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bear Flag Elementary	61/67439-00-0234	6/6/2008	Pending	$ 95,889
SANTA ROSA HIGH	SONOMA	Cook (Lawrence) Middle	61/70920-00-0009	6/6/2008	Pending	$ 8,818
SANTA ROSA HIGH	SONOMA	Cook (Lawrence) Middle	61/70920-00-0010	6/6/2008	Pending	$ 6,275
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0006	6/9/2008	Pending	$ 1,538,441
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0007	6/9/2008	Pending	$ 980,748
LIVE OAK UNIFIED	SUTTER	Luther Elementary	61/71399-00-0008	6/9/2008	Pending	$ 359,547
LIVE OAK UNIFIED	SUTTER	Live Oak Middle	61/71399-00-0009	6/9/2008	Pending	$ 2,534,119
LIVE OAK UNIFIED	SUTTER	Live Oak Middle	61/71399-00-0010	6/9/2008	Pending	$ 619,739
LIVE OAK UNIFIED	SUTTER	Live Oak Middle	61/71399-00-0011	6/9/2008	Pending	$ 51,452
LIVE OAK UNIFIED	SUTTER	Live Oak Middle	61/71399-00-0012	6/9/2008	Pending	$ 499,903
LIVE OAK UNIFIED	SUTTER	Live Oak Middle	61/71399-00-0013	6/9/2008	Pending	$ 63,257
LIVE OAK UNIFIED	SUTTER	Live Oak Middle	61/71399-00-0014	6/9/2008	Pending	$ 41,752
LYNWOOD UNIFIED	LOS ANGELES	Twain (Mark) Elementary	61/64774-00-0033	6/9/2008	Pending	$ 123,422
LYNWOOD UNIFIED	LOS ANGELES	Twain (Mark) Elementary	61/64774-00-0034	6/9/2008	Pending	$ 221,425
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0077	6/9/2008	Pending	$ 631,456
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0078	6/9/2008	Pending	$ 648,916
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0079	6/9/2008	Pending	$ 1,014,418
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0080	6/9/2008	Pending	$ 13,029
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0081	6/9/2008	Pending	$ 3,153,976
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Monte Vista Elementary	61/64816-00-0018	6/9/2008	Pending	$ 858,459
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Parkview Elementary	61/64816-00-0019	6/9/2008	Pending	$ 727,072
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Payne (Willard F.) Elementary	61/64816-00-0020	6/9/2008	Pending	$ 817,583
MOUNTAIN VIEW ELEMENTARY	LOS ANGELES	Twin Lakes Elementary	61/64816-00-0021	6/9/2008	Pending	$ 561,452
OCEAN VIEW ELEMENTARY	VENTURA	Tierra Vista Elementary	61/72512-00-0004	6/9/2008	Pending	$ 21,625
OCEAN VIEW ELEMENTARY	VENTURA	Mar Vista Elementary	61/72512-00-0005	6/9/2008	Pending	$ 57,594
POMONA UNIFIED	LOS ANGELES	Garey Senior High	61/64907-00-0033	6/9/2008	Pending	$ 35,394
POMONA UNIFIED	LOS ANGELES	Roosevelt Elementary	61/64907-00-0034	6/9/2008	Pending	$ 386,000
SACRAMENTO CITY UNIFIED	SACRAMENTO	Fruit Ridge Elementary	61/67439-00-0235	6/9/2008	Pending	$ 300,293
SACRAMENTO CITY UNIFIED	SACRAMENTO	Anthony (Susan B.) Elementary	61/67439-00-0236	6/9/2008	Pending	$ 564,686
SACRAMENTO CITY UNIFIED	SACRAMENTO	Pacific Elementary	61/67439-00-0237	6/9/2008	Pending	$ 1,316,518
SACRAMENTO CITY UNIFIED	SACRAMENTO	Pacific Elementary	61/67439-00-0238	6/9/2008	Pending	$ 55,509
SACRAMENTO CITY UNIFIED	SACRAMENTO	Pacific Elementary	61/67439-00-0239	6/9/2008	Pending	$ 1,051,493

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
SACRAMENTO CITY UNIFIED	SACRAMENTO	Tahoe Elementary	61/67439-00-0240	6/9/2008	Pending	$ 441,801
SAN DIEGO UNIFIED	SAN DIEGO	Wilson Middle	61/68338-00-0273	6/9/2008	Pending	$ 40,912
SAN DIEGO UNIFIED	SAN DIEGO	Wilson Middle	61/68338-00-0274	6/9/2008	Pending	$ 38,918
MONTAGUE ELEMENTARY	SISKIYOU	Montague Elementary	61/70417-00-0022	6/11/2008	Pending	$ 171,838
OROVILLE CITY ELEMENTARY	BUTTE	Wyandotte Avenue Elementary	61/61507-00-0004	6/11/2008	Pending	$ 667,155
OROVILLE CITY ELEMENTARY	BUTTE	Oakdale Heights Elementary	61/61507-00-0005	6/11/2008	Pending	$ 357,727
THERMALITO UNION ELEMENTARY	BUTTE	Poplar Avenue Elementary	61/61549-00-0013	6/11/2008	Pending	$ 97,094
COMPTON UNIFIED	LOS ANGELES	Willowbrook Middle	61/73437-00-0052	6/12/2008	Pending	$ 103,200
DESERT SANDS UNIFIED	RIVERSIDE	Indio High	61/67058-00-0008	6/12/2008	Pending	$ 2,591,276
DESERT SANDS UNIFIED	RIVERSIDE	Indio Middle	61/67058-00-0009	6/12/2008	Pending	$ 101,584
MORENO VALLEY UNIFIED	RIVERSIDE	Landmark Middle	61/67124-00-0082	6/12/2008	Pending	$ 441,121
MORENO VALLEY UNIFIED	RIVERSIDE	Honey Hollow Elementary	61/67124-00-0083	6/12/2008	Pending	$ 733,392
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0084	6/12/2008	Pending	$ 640,423
MORENO VALLEY UNIFIED	RIVERSIDE	Vista del Lago High	61/67124-00-0085	6/12/2008	Pending	$ 25,581
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0086	6/12/2008	Pending	$ 10,308
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0087	6/12/2008	Pending	$ 11,798
MORENO VALLEY UNIFIED	RIVERSIDE	Mountain View Middle	61/67124-00-0088	6/12/2008	Pending	$ 9,639
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0089	6/12/2008	Pending	$ 42,796
MORENO VALLEY UNIFIED	RIVERSIDE	Landmark Middle	61/67124-00-0090	6/12/2008	Pending	$ 6,232
MORENO VALLEY UNIFIED	RIVERSIDE	Honey Hollow Elementary	61/67124-00-0091	6/12/2008	Pending	$ 13,010
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0092	6/12/2008	Pending	$ 11,287
MORENO VALLEY UNIFIED	RIVERSIDE	Badger Springs Middle	61/67124-00-0093	6/12/2008	Pending	$ 25,691
MORENO VALLEY UNIFIED	RIVERSIDE	Cloverdale Elementary	61/67124-00-0094	6/12/2008	Pending	$ 628,575
STOCKTON CITY UNIFIED	SAN JOAQUIN	Roosevelt Elementary	61/68676-00-0053	6/12/2008	Pending	$ 703,853
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	Lake Elementary	61/61796-00-0157	6/12/2008	Pending	$ 364,063
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	Kennedy High	61/61796-00-0158	6/12/2008	Pending	$ 2,365,262
SAN DIEGO UNIFIED	SAN DIEGO	Audubon Elementary	61/68338-00-0275	6/13/2008	Pending	$ 15,663
SAN DIEGO UNIFIED	SAN DIEGO	Adams Elementary	61/68338-00-0276	6/13/2008	Pending	$ 11,000
SAN DIEGO UNIFIED	SAN DIEGO	Rowan Elementary	61/68338-00-0277	6/13/2008	Pending	$ 15,514
CALEXICO UNIFIED	IMPERIAL	Charles (Blanche) Elementary	61/63099-00-0001	6/16/2008	Pending	$ 30,013
CALEXICO UNIFIED	IMPERIAL	De Anza Junior High	61/63099-00-0002	6/16/2008	Pending	$ 49,546
CALEXICO UNIFIED	IMPERIAL	Mains Elementary	61/63099-00-0003	6/16/2008	Pending	$ 67,971
CALEXICO UNIFIED	IMPERIAL	Dool Elementary	61/63099-00-0004	6/16/2008	Pending	$ 80,177
CALEXICO UNIFIED	IMPERIAL	Kennedy Garden	61/63099-00-0005	6/16/2008	Pending	$ 28,095
CALEXICO UNIFIED	IMPERIAL	Calexico High	61/63099-00-0006	6/16/2008	Pending	$ 113,892
CALEXICO UNIFIED	IMPERIAL	Moreno (William) Junior High	61/63099-00-0007	6/16/2008	Pending	$ 56,507
CALEXICO UNIFIED	IMPERIAL	Rockwood Elementary	61/63099-00-0008	6/16/2008	Pending	$ 21,527
CALEXICO UNIFIED	IMPERIAL	Jefferson Elementary	61/63099-00-0009	6/16/2008	Pending	$ 64,872
CALIPATRIA UNIFIED	IMPERIAL	Calipatria High	61/63107-00-0007	6/16/2008	Pending	$ 2,370,655
CHULA VISTA ELEMENTARY	SAN DIEGO	Rice (Lilian J.) Elementary	61/68023-00-0016	6/16/2008	Pending	$ 68,227
CHULA VISTA ELEMENTARY	SAN DIEGO	Lauderbach (J. Calvin) Elementary	61/68023-00-0017	6/16/2008	Pending	$ 11,479
LINDSAY UNIFIED	TULARE	Jefferson Elementary	61/71993-00-0065	6/16/2008	Pending	$ 22,855
LINDSAY UNIFIED	TULARE	Jefferson Elementary	61/71993-00-0066	6/16/2008	Pending	$ 43,361
LINDSAY UNIFIED	TULARE	Jefferson Elementary	61/71993-00-0067	6/16/2008	Pending	$ 42,952
POND UNION ELEMENTARY	KERN	Pond Elementary	61/63719-00-0001	6/16/2008	Pending	$ 86,703
SAN JACINTO UNIFIED	RIVERSIDE	Monte Vista Middle	61/67249-00-0016	6/16/2008	Pending	$ 31,271
SAN JACINTO UNIFIED	RIVERSIDE	North Mountain Middle	61/67249-00-0017	6/16/2008	Pending	$ 46,269
SANTA PAULA ELEMENTARY	VENTURA	Isbell Middle	61/72587-00-0011	6/16/2008	Pending	$ 12,005
SACRAMENTO CITY UNIFIED	SACRAMENTO	Fruit Ridge Elementary	61/67439-00-0241	6/17/2008	Pending	$ 237,900
SACRAMENTO CITY UNIFIED	SACRAMENTO	Fruit Ridge Elementary	61/67439-00-0242	6/17/2008	Pending	$ 4,847,915
SACRAMENTO CITY UNIFIED	SACRAMENTO	Fruit Ridge Elementary	61/67439-00-0243	6/17/2008	Pending	$ 712,219
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bonnheim (Joseph) Elementary	61/67439-00-0244	6/17/2008	Pending	$ 28,334
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bowling Green Elementary (Charter)	61/67439-00-0245	6/17/2008	Pending	$ 84,964
SACRAMENTO CITY UNIFIED	SACRAMENTO	Rosa Parks (formerly Goethe (Charl	61/67439-00-0249	6/17/2008	Pending	$ 343,319
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wood (Will C.) Middle	61/67439-00-0250	6/17/2008	Pending	$ 304,290
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bacon (Fern) Middle	61/67439-00-0251	6/17/2008	Pending	$ 480,538
SACRAMENTO CITY UNIFIED	SACRAMENTO	Smith (Jedediah) Elementary	61/67439-00-0252	6/17/2008	Pending	$ 385,614
SACRAMENTO CITY UNIFIED	SACRAMENTO	Kemble (Edward) Elementary	61/67439-00-0253	6/17/2008	Pending	$ 73,271
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0254	6/17/2008	Pending	$ 22,729
SAN JACINTO UNIFIED	RIVERSIDE	San Jacinto Elementary	61/67249-00-0018	6/17/2008	Pending	$ 20,566
SAN JACINTO UNIFIED	RIVERSIDE	Park Hill Elementary	61/67249-00-0019	6/17/2008	Pending	$ 11,756
SANTA ANA UNIFIED	ORANGE	Remington (Frederick) Elementary	61/66670-00-0073	6/17/2008	Pending	$ 5,782,547
CASCADE UNION ELEMENTARY	SHASTA	Verde Vale Elementary	61/69914-00-0017	6/18/2008	Pending	$ 256,429
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0004	6/18/2008	Pending	$ 1,349,875
EL MONTE UNION HIGH	LOS ANGELES	El Monte High	61/64519-00-0010	6/18/2008	Pending	$ 26,895
MONTAGUE ELEMENTARY	SISKIYOU	Montague Elementary	61/70417-00-0023	6/18/2008	Pending	$ 445,485
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0095	6/18/2008	Pending	$ 1,774,424
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0096	6/18/2008	Pending	$ 576,050
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0097	6/18/2008	Pending	$ 6,831
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0098	6/18/2008	Pending	$ 818,291
PIERCE JOINT UNIFIED	COLUSA	Arbuckle Elementary	61/61614-00-0015	6/18/2008	Pending	$ 31,942
SACRAMENTO CITY UNIFIED	SACRAMENTO	Pacific Elementary	61/67439-00-0246	6/18/2008	Pending	$ 47,428
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0247	6/18/2008	Pending	$ 2,484,570
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0248	6/18/2008	Pending	$ 17,885
SACRAMENTO CITY UNIFIED	SACRAMENTO	Burbank (Luther) High	61/67439-00-0255	6/18/2008	Pending	$ 10,859
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sloat (John D.) Elementary	61/67439-00-0268	6/18/2008	Pending	$ 23,671
SACRAMENTO CITY UNIFIED	SACRAMENTO	Phillips (Ethel) Elementary	61/67439-00-0269	6/18/2008	Pending	$ 72,617
SAN DIEGO UNIFIED	SAN DIEGO	Baker Elementary	61/68338-00-0278	6/18/2008	Pending	$ 14,367

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
SAN DIEGO UNIFIED	SAN DIEGO	Cherokee Point Elementary	61/68338-00-0279	6/18/2008	Pending	$ 8,542
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Ocala Middle	61/69369-00-0011	6/19/2008	Pending	$ 48,652
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Pala Middle	61/69369-00-0012	6/19/2008	Pending	$ 142,233
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Meyer (Donald J.) Elementary	61/69369-00-0021	6/19/2008	Pending	$ 27,592
KINGS RIVER UNION ELEMENTARY	TULARE	Kings River Elementary	61/71969-00-0005	6/19/2008	Pending	$ 50,436
LUCERNE ELEMENTARY	LAKE	Lucerne Elementary	61/64048-00-0003	6/19/2008	Pending	$ 5,410
LYNWOOD UNIFIED	LOS ANGELES	Rogers (Will) Elementary	61/64774-00-0035	6/19/2008	Pending	$ 213,344
LYNWOOD UNIFIED	LOS ANGELES	Rogers (Will) Elementary	61/64774-00-0036	6/19/2008	Pending	$ 192,430
LYNWOOD UNIFIED	LOS ANGELES	Marshall (Thurgood) Elementary	61/64774-00-0037	6/19/2008	Pending	$ 20,761
LYNWOOD UNIFIED	LOS ANGELES	Lugo Elementary	61/64774-00-0038	6/19/2008	Pending	$ 188,073
LYNWOOD UNIFIED	LOS ANGELES	Hosler Middle	61/64774-00-0039	6/19/2008	Pending	$ 105,006
LYNWOOD UNIFIED	LOS ANGELES	Hosler Middle	61/64774-00-0040	6/19/2008	Pending	$ 352,324
LYNWOOD UNIFIED	LOS ANGELES	Marco Antonio Firebaugh High	61/64774-00-0041	6/19/2008	Pending	$ 19,006
LYNWOOD UNIFIED	LOS ANGELES	Chavez (Cesar) Middle	61/64774-00-0042	6/19/2008	Pending	$ 231,371
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0099	6/19/2008	Pending	$ 1,218,007
SACRAMENTO CITY UNIFIED	SACRAMENTO	Freeport Elementary	61/67439-00-0256	6/19/2008	Pending	$ 138,038
SACRAMENTO CITY UNIFIED	SACRAMENTO	Freeport Elementary	61/67439-00-0257	6/19/2008	Pending	$ 200,629
SALINAS CITY ELEMENTARY	MONTEREY	Monterey Park Elementary	61/66142-00-0018	6/19/2008	Pending	$ 651,325
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0083	6/19/2008	Pending	$ 639,590
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Fischer (Clyde L.) Middle	61/69369-00-0013	6/20/2008	Pending	$ 61,779
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Slonaker (Harry) Elementary	61/69369-00-0014	6/20/2008	Pending	$ 165,299
CHULA VISTA ELEMENTARY	SAN DIEGO	Rice (Lilian J.) Elementary	61/68023-00-0018	6/20/2008	Pending	$ 28,022
POMONA UNIFIED	LOS ANGELES	Pomona Senior High	61/64907-00-0035	6/20/2008	Pending	$ 988,200
POMONA UNIFIED	LOS ANGELES	Madison Elementary	61/64907-00-0036	6/20/2008	Pending	$ 578,700
POMONA UNIFIED	LOS ANGELES	Emerson Middle	61/64907-00-0037	6/20/2008	Pending	$ 677,700
POMONA UNIFIED	LOS ANGELES	Barfield (C. Joseph) Elementary	61/64907-00-0038	6/20/2008	Pending	$ 535,700
SAN DIEGO UNIFIED	SAN DIEGO	Balboa Elementary YR	61/68338-00-0280	6/20/2008	Pending	$ 23,430
STOCKTON CITY UNIFIED	SAN JOAQUIN	Pulliam Elementary	61/68676-00-0058	6/20/2008	Pending	$ 692,593
STOCKTON CITY UNIFIED	SAN JOAQUIN	Monroe Elementary	61/68676-00-0059	6/20/2008	Pending	$ 828,034
STOCKTON CITY UNIFIED	SAN JOAQUIN	Madison Elementary	61/68676-00-0060	6/20/2008	Pending	$ 1,194,463
STOCKTON CITY UNIFIED	SAN JOAQUIN	Madison Elementary	61/68676-00-0061	6/20/2008	Pending	$ 132,997
STOCKTON CITY UNIFIED	SAN JOAQUIN	King Elementary	61/68676-00-0062	6/20/2008	Pending	$ 311,687
STOCKTON CITY UNIFIED	SAN JOAQUIN	King Elementary	61/68676-00-0063	6/20/2008	Pending	$ 97,558
STOCKTON CITY UNIFIED	SAN JOAQUIN	Hazelton Elementary	61/68676-00-0064	6/20/2008	Pending	$ 52,930
LYNWOOD UNIFIED	LOS ANGELES	Wilson Elementary	61/64774-00-0043	6/23/2008	Pending	$ 269,031
LYNWOOD UNIFIED	LOS ANGELES	Lynwood High	61/64774-00-0044	6/23/2008	Pending	$ 149,011
LYNWOOD UNIFIED	LOS ANGELES	Wilson Elementary	61/64774-00-0045	6/23/2008	Pending	$ 222,443
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0100	6/23/2008	Pending	$ 88,216
MORENO VALLEY UNIFIED	RIVERSIDE	Edgemont Elementary	61/67124-00-0101	6/23/2008	Pending	$ 71,596
MORENO VALLEY UNIFIED	RIVERSIDE	Armada Elementary	61/67124-00-0102	6/23/2008	Pending	$ 24,523
PALMDALE ELEMENTARY	LOS ANGELES	Cactus	61/64857-00-0022	6/23/2008	Pending	$ 289,520
PALMDALE ELEMENTARY	LOS ANGELES	Desert Rose Elementary	61/64857-00-0023	6/23/2008	Pending	$ 59,027
PALMDALE ELEMENTARY	LOS ANGELES	Joshua Hills Elementary	61/64857-00-0024	6/23/2008	Pending	$ 26,234
PALMDALE ELEMENTARY	LOS ANGELES	Juniper Intermediate	61/64857-00-0025	6/23/2008	Pending	$ 45,910
PALMDALE ELEMENTARY	LOS ANGELES	Manzanita Elementary	61/64857-00-0026	6/23/2008	Pending	$ 39,351
PALMDALE ELEMENTARY	LOS ANGELES	Mesa Intermediate	61/64857-00-0027	6/23/2008	Pending	$ 504,770
PALMDALE ELEMENTARY	LOS ANGELES	Palm Tree Elementary	61/64857-00-0028	6/23/2008	Pending	$ 296,071
PALMDALE ELEMENTARY	LOS ANGELES	Mesquite Elementary	61/64857-00-0029	6/23/2008	Pending	$ 277,099
PALMDALE ELEMENTARY	LOS ANGELES	Quail Valley Elementary	61/64857-00-0030	6/23/2008	Pending	$ 13,117
PALMDALE ELEMENTARY	LOS ANGELES	Tamarisk Elementary	61/64857-00-0031	6/23/2008	Pending	$ 45,910
PALMDALE ELEMENTARY	LOS ANGELES	Tumbleweed Elementary	61/64857-00-0032	6/23/2008	Pending	$ 52,469
PALMDALE ELEMENTARY	LOS ANGELES	Wildflower Elementary	61/64857-00-0033	6/23/2008	Pending	$ 240,816
PALMDALE ELEMENTARY	LOS ANGELES	Yucca Elementary	61/64857-00-0034	6/23/2008	Pending	$ 26,234
PALMDALE ELEMENTARY	LOS ANGELES	Mesquite Elementary	61/64857-00-0035	6/23/2008	Pending	$ 348,017
PALMDALE ELEMENTARY	LOS ANGELES	Palm Tree Elementary	61/64857-00-0036	6/23/2008	Pending	$ 333,760
PALMDALE ELEMENTARY	LOS ANGELES	Quail Valley Elementary	61/64857-00-0037	6/23/2008	Pending	$ 34,022
PALMDALE ELEMENTARY	LOS ANGELES	Summerwind Elementary	61/64857-00-0038	6/23/2008	Pending	$ 116,018
PALMDALE ELEMENTARY	LOS ANGELES	Tamarisk Elementary	61/64857-00-0039	6/23/2008	Pending	$ 238,023
PALMDALE ELEMENTARY	LOS ANGELES	Tumbleweed Elementary	61/64857-00-0040	6/23/2008	Pending	$ 207,138
PALMDALE ELEMENTARY	LOS ANGELES	Wildflower Elementary	61/64857-00-0041	6/23/2008	Pending	$ 115,313
PALMDALE ELEMENTARY	LOS ANGELES	Yucca Elementary	61/64857-00-0042	6/23/2008	Pending	$ 263,067
PALMDALE ELEMENTARY	LOS ANGELES	Mesa Intermediate	61/64857-00-0043	6/23/2008	Pending	$ 570,357
PALMDALE ELEMENTARY	LOS ANGELES	Juniper Intermediate	61/64857-00-0044	6/23/2008	Pending	$ 377,252
PALMDALE ELEMENTARY	LOS ANGELES	Manzanita Elementary	61/64857-00-0045	6/23/2008	Pending	$ 11,070
PALMDALE ELEMENTARY	LOS ANGELES	Joshua Hills Elementary	61/64857-00-0046	6/23/2008	Pending	$ 280,278
PALMDALE ELEMENTARY	LOS ANGELES	Desert Rose Elementary	61/64857-00-0047	6/23/2008	Pending	$ 689,125
PALMDALE ELEMENTARY	LOS ANGELES	Cactus	61/64857-00-0048	6/23/2008	Pending	$ 689,200
STOCKTON CITY UNIFIED	SAN JOAQUIN	Hazelton Elementary	61/68676-00-0054	6/23/2008	Pending	$ 1,062,561
STOCKTON CITY UNIFIED	SAN JOAQUIN	Hoover Elementary	61/68676-00-0055	6/23/2008	Pending	$ 828,034
STOCKTON CITY UNIFIED	SAN JOAQUIN	Edison High	61/68676-00-0056	6/23/2008	Pending	$ 4,070,560
STOCKTON CITY UNIFIED	SAN JOAQUIN	Franklin Senior High	61/68676-00-0057	6/23/2008	Pending	$ 3,806,757
WHITTIER CITY ELEMENTARY	LOS ANGELES	West Whittier Elementary	61/65110-00-0046	6/23/2008	Pending	$ 422,568
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0005	6/25/2008	Pending	$ 1,320,968
MORENO VALLEY UNIFIED	RIVERSIDE	Landmark Middle	61/67124-00-0103	6/25/2008	Pending	$ 16,631
MORENO VALLEY UNIFIED	RIVERSIDE	Creekside Elementary	61/67124-00-0104	6/25/2008	Pending	$ 5,857
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0105	6/25/2008	Pending	$ 43,108
MORENO VALLEY UNIFIED	RIVERSIDE	Palm Middle	61/67124-00-0106	6/25/2008	Pending	$ 14,628
MORENO VALLEY UNIFIED	RIVERSIDE	Vista del Lago High	61/67124-00-0107	6/25/2008	Pending	$ 51,014

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
NORTH SACRAMENTO ELEMENTARY	SACRAMENTO	Northwood Elementary	61/67397-00-0008	6/25/2008	Pending	$ 961,138
NORTH SACRAMENTO ELEMENTARY	SACRAMENTO	Johnson (Harmon) Elementary	61/67397-00-0009	6/25/2008	Pending	$ 412,475
NORTH SACRAMENTO ELEMENTARY	SACRAMENTO	Woodlake Elementary	61/67397-00-0010	6/25/2008	Pending	$ 407,073
ORANGE UNIFIED	ORANGE	Fairhaven Elementary	61/66621-00-0069	6/25/2008	Pending	$ 278,832
PASADENA UNIFIED	LOS ANGELES	Wilson Middle	61/64881-00-0040	6/25/2008	Pending	$ 300,634
PASADENA UNIFIED	LOS ANGELES	Altadena Elementary	61/64881-00-0041	6/25/2008	Pending	$ 102,104
PASADENA UNIFIED	LOS ANGELES	Loma Alta Elementary	61/64881-00-0042	6/25/2008	Pending	$ 166,875
PASADENA UNIFIED	LOS ANGELES	Jackson Elementary	61/64881-00-0043	6/25/2008	Pending	$ 110,075
PASADENA UNIFIED	LOS ANGELES	Nia Educational Charter School	61/64881-00-0044	6/25/2008	Pending	$ 232,195
PASADENA UNIFIED	LOS ANGELES	San Rafael Elementary	61/64881-00-0045	6/25/2008	Pending	$ 200,679
PASADENA UNIFIED	LOS ANGELES	John Muir High (formerly Muir High)	61/64881-00-0046	6/25/2008	Pending	$ 849,839
PASADENA UNIFIED	LOS ANGELES	Blair High	61/64881-00-0047	6/25/2008	Pending	$ 135,886
PASADENA UNIFIED	LOS ANGELES	Washington Middle	61/64881-00-0048	6/25/2008	Pending	$ 174,462
SAN DIEGO UNIFIED	SAN DIEGO	Linda Vista Elementary	61/68338-00-0281	6/25/2008	Pending	$ 18,596
SAN DIEGO UNIFIED	SAN DIEGO	San Diego LEADS (formerly Learn, E	61/68338-00-0282	6/25/2008	Pending	$ 53,801
SANTA ANA UNIFIED	ORANGE	Davis (Wallace R.) Elementary	61/66670-00-0074	6/25/2008	Pending	$ 188,729
SANTA ANA UNIFIED	ORANGE	Santa Ana High	61/66670-00-0075	6/25/2008	Pending	$ 651,784
TULARE CITY ELEMENTARY	TULARE	Roosevelt Elementary	61/72231-00-0004	6/25/2008	Pending	$ 28,317
TULARE CITY ELEMENTARY	TULARE	Mulcahy Middle	61/72231-00-0005	6/25/2008	Pending	$ 24,661
TULARE CITY ELEMENTARY	TULARE	Roosevelt Elementary	61/72231-00-0006	6/25/2008	Pending	$ 80,933
TULARE CITY ELEMENTARY	TULARE	Wilson Elementary	61/72231-00-0007	6/25/2008	Pending	$ 79,197
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0135	6/26/2008	Pending	$ 487,880
CUTLER-OROSI JOINT UNIFIED	TULARE	El Monte Jr. High	61/71860-00-0136	6/26/2008	Pending	$ 389,900
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0137	6/26/2008	Pending	$ 762,880
LINDSAY UNIFIED	TULARE	Garvey (Steve) Junior High	61/71993-00-0068	6/27/2008	Pending	$ 23,740
LINDSAY UNIFIED	TULARE	Lindsay Senior High	61/71993-00-0069	6/27/2008	Pending	$ 12,410
ANAHEIM CITY	ORANGE	Sunkist Elementary	61/66423-00-0004	6/30/2008	Pending	$ 69,898
KING CITY JOINT UNION HIGH	MONTEREY	King City High	61/66068-00-0001	6/30/2008	Pending	$ 1,518,391
KING CITY JOINT UNION HIGH	MONTEREY	Greenfield High	61/66068-00-0002	6/30/2008	Pending	$ 78,696
KING CITY UNION ELEMENTARY	MONTEREY	Del Rey Elementary	61/66050-00-0001	6/30/2008	Pending	$ 581,564
KING CITY UNION ELEMENTARY	MONTEREY	Santa Lucia Elementary	61/66050-00-0002	6/30/2008	Pending	$ 812,718
KING CITY UNION ELEMENTARY	MONTEREY	Chalone Peaks (formerly San Lorenz	61/66050-00-0003	6/30/2008	Pending	$ 1,181,526
LYNWOOD UNIFIED	LOS ANGELES	Roosevelt Elementary	61/64774-00-0046	6/30/2008	Pending	$ 205,158
LYNWOOD UNIFIED	LOS ANGELES	Lynwood High	61/64774-00-0047	6/30/2008	Pending	$ 57,915
SACRAMENTO CITY UNIFIED	SACRAMENTO	Freeport Elementary	61/67439-00-0258	6/30/2008	Pending	$ 36,742
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0259	6/30/2008	Pending	$ 47,159
SAN DIEGO UNIFIED	SAN DIEGO	Bell Junior High	61/68338-00-0283	6/30/2008	Pending	$ 25,737
SAN JACINTO UNIFIED	RIVERSIDE	Hyatt Elementary	61/67249-00-0020	6/30/2008	Pending	$ 240,969
SANTA ANA UNIFIED	ORANGE	Diamond Elementary	61/66670-00-0076	6/30/2008	Pending	$ 367,799
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0111	7/1/2008	Pending	$ 70,276
PITTSBURG UNIFIED	CONTRA COSTA	Foothill Elementary	61/61788-00-0112	7/1/2008	Pending	$ 354,012
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0113	7/1/2008	Pending	$ 382,565
POMONA UNIFIED	LOS ANGELES	Garey Senior High	61/64907-00-0039	7/1/2008	Pending	$ 865,421
POMONA UNIFIED	LOS ANGELES	Garey Senior High	61/64907-00-0040	7/1/2008	Pending	$ 165,281
SACRAMENTO CITY UNIFIED	SACRAMENTO	Twain (Mark) Elementary	61/67439-00-0260	7/1/2008	Pending	$ 62,763
SACRAMENTO CITY UNIFIED	SACRAMENTO	Sacramento Charter High	61/67439-00-0261	7/1/2008	Pending	$ 260,604
CALEXICO UNIFIED	IMPERIAL	Rockwood Elementary	61/63099-00-0010	7/2/2008	Pending	$ 2,203,899
CALEXICO UNIFIED	IMPERIAL	Dool Elementary	61/63099-00-0011	7/2/2008	Pending	$ 2,962,556
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Coachella Valley High	61/73676-00-0096	7/2/2008	Pending	$ 12,373
SAN JACINTO UNIFIED	RIVERSIDE	Park Hill Elementary	61/67249-00-0021	7/2/2008	Pending	$ 123,710
CALEXICO UNIFIED	IMPERIAL	De Anza Junior High	61/63099-00-0012	7/3/2008	Pending	$ 458,976
LINDSAY UNIFIED	TULARE	Washington Elementary	61/71993-00-0070	7/3/2008	Pending	$ 9,400
LINDSAY UNIFIED	TULARE	Garvey (Steve) Junior High	61/71993-00-0071	7/3/2008	Pending	$ 66,000
LINDSAY UNIFIED	TULARE	Jefferson Elementary	61/71993-00-0072	7/3/2008	Pending	$ 354,000
LYNWOOD UNIFIED	LOS ANGELES	Hosler Middle	61/64774-00-0048	7/3/2008	Pending	$ 223,090
PALMDALE ELEMENTARY	LOS ANGELES	Joshua Hills Elementary	61/64857-00-0049	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Desert Rose Elementary	61/64857-00-0050	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Cactus	61/64857-00-0051	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Tamarisk Elementary	61/64857-00-0052	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Manzanita Elementary	61/64857-00-0053	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Juniper Intermediate	61/64857-00-0054	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Yucca Elementary	61/64857-00-0055	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Wildflower Elementary	61/64857-00-0056	7/3/2008	Pending	$ 43,326
PALMDALE ELEMENTARY	LOS ANGELES	Tumbleweed Elementary	61/64857-00-0057	7/3/2008	Pending	$ 43,326
PASADENA UNIFIED	LOS ANGELES	Charles W. Eliot Middle (formerly Eli	61/64881-00-0049	7/3/2008	Pending	$ 275,876
BRAWLEY ELEMENTARY	IMPERIAL	Swing (Phil D.) Elementary	61/63073-00-0002	7/7/2008	Pending	$ 373,517
BRAWLEY ELEMENTARY	IMPERIAL	Worth (Barbara) Junior High	61/63073-00-0003	7/7/2008	Pending	$ 802,794
CALEXICO UNIFIED	IMPERIAL	Kennedy Garden	61/63099-00-0013	7/7/2008	Pending	$ 944,677
CALEXICO UNIFIED	IMPERIAL	Charles (Blanche) Elementary	61/63099-00-0014	7/7/2008	Pending	$ 361,367
CALEXICO UNIFIED	IMPERIAL	Jefferson Elementary	61/63099-00-0015	7/7/2008	Pending	$ 2,314,146
CALEXICO UNIFIED	IMPERIAL	Mains Elementary	61/63099-00-0016	7/7/2008	Pending	$ 1,121,276
CALEXICO UNIFIED	IMPERIAL	Moreno (William) Junior High	61/63099-00-0017	7/7/2008	Pending	$ 509,664
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0108	7/7/2008	Pending	$ 50,453
PALMDALE ELEMENTARY	LOS ANGELES	Mesa Intermediate	61/64857-00-0058	7/7/2008	Pending	$ 302,139
SAN DIEGO UNIFIED	SAN DIEGO	Chollas/Mead Elementary	61/68338-00-0284	7/7/2008	Pending	$ 23,742
STOCKTON CITY UNIFIED	SAN JOAQUIN	Franklin Senior High	61/68676-00-0065	7/7/2008	Pending	$ 166,464
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0030	7/8/2008	Pending	$ 1,507,636
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0031	7/8/2008	Pending	$ 1,704,614

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0032	7/8/2008	Pending	$ 2,455,620
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0033	7/8/2008	Pending	$ 164,782
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0034	7/8/2008	Pending	$ 970,319
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0109	7/8/2008	Pending	$ 147,990
CHULA VISTA ELEMENTARY	SAN DIEGO	Los Altos Elementary	61/68023-00-0019	7/9/2008	Pending	$ 31,351
POMONA UNIFIED	LOS ANGELES	Palomares Middle	61/64907-00-0041	7/9/2008	Pending	$ 4,275
SAN DIEGO UNIFIED	SAN DIEGO	Central Elementary	61/68338-00-0285	7/9/2008	Pending	$ 18,639
COMPTON UNIFIED	LOS ANGELES	Lincoln Elementary	61/73437-00-0211	7/10/2008	Pending	$ 45,840
PALO VERDE UNIFIED	RIVERSIDE	Palo Verde High	61/67181-00-0012	7/10/2008	Pending	$ 7,841
INGLEWOOD UNIFIED	LOS ANGELES	Monroe (Albert F.) Middle	61/64634-00-0001	7/11/2008	Pending	$ 662,590
INGLEWOOD UNIFIED	LOS ANGELES	Inglewood High	61/64634-00-0002	7/11/2008	Pending	$ 2,369,895
INGLEWOOD UNIFIED	LOS ANGELES	Centinela Elementary	61/64634-00-0003	7/11/2008	Pending	$ 581,421
INGLEWOOD UNIFIED	LOS ANGELES	Woodworth (Clyde) Elementary	61/64634-00-0004	7/11/2008	Pending	$ 281,897
INGLEWOOD UNIFIED	LOS ANGELES	Lane (Warren) Elementary	61/64634-00-0005	7/11/2008	Pending	$ 793,531
INGLEWOOD UNIFIED	LOS ANGELES	Morningside High	61/64634-00-0006	7/11/2008	Pending	$ 1,090,971
LODI UNIFIED	SAN JOAQUIN	Wagner-Holt Elementary	61/68585-00-0079	7/11/2008	Pending	$ 117,744
LYNWOOD UNIFIED	LOS ANGELES	Lindbergh Elementary	61/64774-00-0049	7/11/2008	Pending	$ 127,943
LYNWOOD UNIFIED	LOS ANGELES	Lynwood High	61/64774-00-0050	7/11/2008	Pending	$ 1,679,451
MORENO VALLEY UNIFIED	RIVERSIDE	Butterfield Elementary	61/67124-00-0110	7/11/2008	Pending	$ 2,283,946
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0111	7/11/2008	Pending	$ 26,923
MORENO VALLEY UNIFIED	RIVERSIDE	Moreno Valley High	61/67124-00-0112	7/11/2008	Pending	$ 357,731
MORENO VALLEY UNIFIED	RIVERSIDE	Sunnymead Middle	61/67124-00-0113	7/11/2008	Pending	$ 167,806
MORENO VALLEY UNIFIED	RIVERSIDE	Serrano Elementary	61/67124-00-0114	7/11/2008	Pending	$ 11,752
POMONA UNIFIED	LOS ANGELES	Fremont Middle	61/64907-00-0042	7/11/2008	Pending	$ 86,032
SAN DIEGO UNIFIED	SAN DIEGO	Encanto Elementary	61/68338-00-0286	7/11/2008	Pending	$ 16,388
SANTA ANA UNIFIED	ORANGE	Century High	61/66670-00-0077	7/11/2008	Pending	$ 321,152
SANTA ANA UNIFIED	ORANGE	Lathrop (Julia C.) Intermediate	61/66670-00-0078	7/11/2008	Pending	$ 141,998
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0079	7/11/2008	Pending	$ 3,933,429
WHITTIER CITY ELEMENTARY	LOS ANGELES	West Whittier Elementary	61/65110-00-0047	7/11/2008	Pending	$ 4,155
DUARTE UNIFIED	LOS ANGELES	Andres Duarte Elementary	61/64469-00-0001	7/14/2008	Pending	$ 614,675
JURUPA UNIFIED	RIVERSIDE	Mission Middle	61/67090-00-0215	7/14/2008	Pending	$ 9,648
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bowling Green Elementary (Charter)	61/67439-00-0262	7/14/2008	Pending	$ 633,077
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0263	7/14/2008	Pending	$ 281,443
SACRAMENTO CITY UNIFIED	SACRAMENTO	Johnson (Hiram W.) High	61/67439-00-0264	7/14/2008	Pending	$ 350,359
LYNWOOD UNIFIED	LOS ANGELES	Helen Keller Elementary	61/64774-00-0051	7/15/2008	Pending	$ 79,007
LYNWOOD UNIFIED	LOS ANGELES	Lindbergh Elementary	61/64774-00-0052	7/15/2008	Pending	$ 244,156
LYNWOOD UNIFIED	LOS ANGELES	Lindbergh Elementary	61/64774-00-0053	7/15/2008	Pending	$ 252,131
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Dorsa (A. J.) Elementary	61/69369-00-0015	7/16/2008	Pending	$ 32,457
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Chavez (Cesar) Elementary	61/69369-00-0016	7/16/2008	Pending	$ 9,529
LOS ANGELES UNIFIED	LOS ANGELES	Marshall (John) Senior High	61/64733-00-4007	7/16/2008	Pending	$ 32,665
LOS ANGELES UNIFIED	LOS ANGELES	Garfield (James A.) Senior High	61/64733-00-4008	7/16/2008	Pending	$ 570,641
MODESTO CITY ELEMENTARY	STANISLAUS	Shackelford Elementary	61/71167-00-0002	7/16/2008	Pending	$ 129,530
MODESTO CITY ELEMENTARY	STANISLAUS	Shackelford Elementary	61/71167-00-0003	7/16/2008	Pending	$ 460,350
POMONA UNIFIED	LOS ANGELES	Palomares Middle	61/64907-00-0043	7/16/2008	Pending	$ 2,162
POMONA UNIFIED	LOS ANGELES	Lexington Elementary	61/64907-00-0044	7/16/2008	Pending	$ 1,334
POMONA UNIFIED	LOS ANGELES	Harrison Elementary	61/64907-00-0045	7/16/2008	Pending	$ 1,058
POMONA UNIFIED	LOS ANGELES	Ganesha Senior High	61/64907-00-0046	7/16/2008	Pending	$ 8,411
POMONA UNIFIED	LOS ANGELES	Garey Senior High	61/64907-00-0047	7/16/2008	Pending	$ 2,889
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0011	7/16/2008	Pending	$ 321,673
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0012	7/16/2008	Pending	$ 166,813
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0013	7/16/2008	Pending	$ 365,129
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0014	7/16/2008	Pending	$ 185,931
DESERT SANDS UNIFIED	RIVERSIDE	Roosevelt (Theodore) Elementary	61/67058-00-0010	7/17/2008	Pending	$ 225,142
HOLLISTER ELEMENTARY	SAN BENITO	Calaveras Elementary	61/67470-00-0002	7/17/2008	Pending	$ 83,301
HOLLISTER ELEMENTARY	SAN BENITO	R. O. Hardin Elementary	61/67470-00-0003	7/17/2008	Pending	$ 89,412
LYNWOOD UNIFIED	LOS ANGELES	Wilson Elementary	61/64774-00-0054	7/17/2008	Pending	$ 191,100
POMONA UNIFIED	LOS ANGELES	Pomona Senior High	61/64907-00-0048	7/17/2008	Pending	$ 2,980
ROSELAND ELEMENTARY	SONOMA	Roseland Elementary	61/70904-00-0005	7/17/2008	Pending	$ 934,534
SANTA ANA UNIFIED	ORANGE	Century High	61/66670-00-0080	7/17/2008	Pending	$ 695,926
SANTA ANA UNIFIED	ORANGE	Santa Ana High	61/66670-00-0081	7/17/2008	Pending	$ 971,220
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0082	7/17/2008	Pending	$ 3,611,407
WASHINGTON UNIFIED	YOLO	Riverbank Elementary (formerly Gold	61/72694-00-0024	7/17/2008	Pending	$ 316,126
WASHINGTON UNIFIED	YOLO	Riverbank Elementary (formerly Gold	61/72694-00-0025	7/17/2008	Pending	$ 826,066
WASHINGTON UNIFIED	YOLO	Riverbank Elementary (formerly Gold	61/72694-00-0026	7/17/2008	Pending	$ 153,514
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Arbuckle (Clyde) Elementary	61/69369-00-0017	7/18/2008	Pending	$ 38,437
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Cureton (Horace) Elementary	61/69369-00-0018	7/18/2008	Pending	$ 45,921
SACRAMENTO CITY UNIFIED	SACRAMENTO	Wire (Clayton B.) Elementary	61/67439-00-0265	7/18/2008	Pending	$ 402,532
SACRAMENTO CITY UNIFIED	SACRAMENTO	Parkway Elementary	61/67439-00-0266	7/18/2008	Pending	$ 242,525
SAN DIEGO UNIFIED	SAN DIEGO	Kimbrough (Jack) Elementary	61/68338-00-0287	7/18/2008	Pending	$ 19,593
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0138	7/21/2008	Pending	$ 75,771
PALMDALE ELEMENTARY	LOS ANGELES	Yucca Elementary	61/64857-00-0059	7/21/2008	Pending	$ 91,301
PALMDALE ELEMENTARY	LOS ANGELES	Wildflower Elementary	61/64857-00-0060	7/21/2008	Pending	$ 139,374
PALMDALE ELEMENTARY	LOS ANGELES	Tumbleweed Elementary	61/64857-00-0061	7/21/2008	Pending	$ 164,187
PALMDALE ELEMENTARY	LOS ANGELES	Tamarisk Elementary	61/64857-00-0062	7/21/2008	Pending	$ 148,679
PALMDALE ELEMENTARY	LOS ANGELES	Summerwind Elementary	61/64857-00-0063	7/21/2008	Pending	$ 12,212
PALMDALE ELEMENTARY	LOS ANGELES	Quail Valley Elementary	61/64857-00-0064	7/21/2008	Pending	$ 131,999
PALMDALE ELEMENTARY	LOS ANGELES	Palm Tree Elementary	61/64857-00-0065	7/21/2008	Pending	$ 219,238
PALMDALE ELEMENTARY	LOS ANGELES	Mesquite Elementary	61/64857-00-0066	7/21/2008	Pending	$ 132,784

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
PALMDALE ELEMENTARY	LOS ANGELES	Mesa Intermediate	61/64857-00-0067	7/21/2008	Pending	$ 151,393
PALMDALE ELEMENTARY	LOS ANGELES	Manzanita Elementary	61/64857-00-0068	7/21/2008	Pending	$ 191,325
PALMDALE ELEMENTARY	LOS ANGELES	Juniper Intermediate	61/64857-00-0069	7/21/2008	Pending	$ 261,939
PALMDALE ELEMENTARY	LOS ANGELES	Joshua Hills Elementary	61/64857-00-0070	7/21/2008	Pending	$ 320,853
PALMDALE ELEMENTARY	LOS ANGELES	Desert Rose Elementary	61/64857-00-0071	7/21/2008	Pending	$ 133,365
PALMDALE ELEMENTARY	LOS ANGELES	Cactus Middle	61/64857-00-0072	7/21/2008	Pending	$ 312,681
SAN JACINTO UNIFIED	RIVERSIDE	San Jacinto High	61/67249-00-0022	7/21/2008	Pending	$ 10,768
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0011	7/21/2008	Pending	$ 4,404,696
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0012	7/21/2008	Pending	$ 41,585
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0013	7/21/2008	Pending	$ 253,600
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0014	7/21/2008	Pending	$ 532,851
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0015	7/21/2008	Pending	$ 43,076
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0016	7/21/2008	Pending	$ 24,286
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0017	7/21/2008	Pending	$ 44,712
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0018	7/22/2008	Pending	$ 566,484
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0019	7/22/2008	Pending	$ 48,181
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0020	7/22/2008	Pending	$ 215,284
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0139	7/23/2008	Pending	$ 200,905
NORWALK-LA MIRADA UNIFIED	LOS ANGELES	Norwalk High	61/64840-00-0016	7/23/2008	Pending	$ 442,404
CALEXICO UNIFIED	IMPERIAL	Calexico High	61/63099-00-0018	7/24/2008	Pending	$ 1,488,979
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Hawthorne High	61/64352-00-0035	7/24/2008	Pending	$ 3,079,825
LODI UNIFIED	SAN JOAQUIN	Sutherland Elementary	61/68585-00-0080	7/24/2008	Pending	$ 624,158
PERRIS UNION HIGH	RIVERSIDE	Perris High	61/67207-00-0008	7/24/2008	Pending	$ 540,297
PITTSBURG UNIFIED	CONTRA COSTA	Rancho Medanos Junior High (forme	61/61788-00-0006	7/24/2008	Pending	$ 6,636
PITTSBURG UNIFIED	CONTRA COSTA	Pittsburg Senior High	61/61788-00-0114	7/24/2008	Pending	$ 5,451
PITTSBURG UNIFIED	CONTRA COSTA	Parkside Elementary	61/61788-00-0115	7/24/2008	Pending	$ 13,876
PITTSBURG UNIFIED	CONTRA COSTA	Foothill Elementary	61/61788-00-0116	7/24/2008	Pending	$ 5,946
PITTSBURG UNIFIED	CONTRA COSTA	Highlands Elementary	61/61788-00-0117	7/24/2008	Pending	$ 5,750
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	61/73932-00-0011	7/24/2008	Pending	$ 11,168
REEF-SUNSET UNIFIED	KINGS	Avenal High	61/73932-00-0012	7/24/2008	Pending	$ 14,330
SAN DIEGO UNIFIED	SAN DIEGO	Fulton Elementary	61/68338-00-0288	7/24/2008	Pending	$ 24,927
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Fischer (Clyde L.) Middle	61/69369-00-0019	7/25/2008	Pending	$ 58,529
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Meyer (Donald J.) Elementary	61/69369-00-0020	7/25/2008	Pending	$ 27,876
CALEXICO UNIFIED	IMPERIAL	De Anza Junior High	61/63099-00-0019	7/25/2008	Pending	$ 391,661
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0140	7/25/2008	Pending	$ 50,543
ORANGE UNIFIED	ORANGE	Handy Elementary	61/66621-00-0070	7/28/2008	Pending	$ 198,966
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bonnheim (Joseph) Elementary	61/67439-00-0267	7/28/2008	Pending	$ 33,538
SAN DIEGO UNIFIED	SAN DIEGO	Logan Elementary	61/68338-00-0289	7/28/2008	Pending	$ 10,858
SAN DIEGO UNIFIED	SAN DIEGO	Clairemont Senior High	61/68338-00-0290	7/28/2008	Pending	$ 35,944
SWEETWATER UNION HIGH	SAN DIEGO	Montgomery Senior High	61/68411-00-0053	7/28/2008	Pending	$ 5,521,616
COMPTON UNIFIED	LOS ANGELES	McKinley Elementary	61/73437-00-0210	7/29/2008	Pending	$ 9,220
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0028	7/29/2008	Pending	$ 166,075
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0029	7/29/2008	Pending	$ 210,708
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Mecca Elementary	61/73676-00-0097	7/30/2008	Pending	$ 119,234
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Coachella Valley High	61/73676-00-0098	7/30/2008	Pending	$ 21,709
DESERT SANDS UNIFIED	RIVERSIDE	Madison (James) Elementary	61/67058-00-0011	7/30/2008	Pending	$ 552,306
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0141	7/31/2008	Pending	$ 91,606
SAN JUAN UNIFIED	SACRAMENTO	San Juan High	61/67447-00-0021	7/31/2008	Pending	$ 1,014,916
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Goss (Mildred) Elementary	61/69369-00-0023	8/1/2008	Pending	$ 18,868
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Hubbard (O. S.) Elementary	61/69369-00-0024	8/1/2008	Pending	$ 16,557
LINDSAY UNIFIED	TULARE	Jefferson Elementary	61/71993-00-0073	8/1/2008	Pending	$ 48,007
SAN DIEGO UNIFIED	SAN DIEGO	School of Multimedia & Visual Arts a	61/68338-00-0291	8/1/2008	Pending	$ 6,929
SAN DIEGO UNIFIED	SAN DIEGO	School of Law & Business	61/68338-00-0292	8/1/2008	Pending	$ 50,769
SOLEDAD UNIFIED	MONTEREY	Gabilan Elementary	61/75440-00-0002	8/1/2008	Pending	$ 358,890
SOLEDAD UNIFIED	MONTEREY	Main Street Middle	61/75440-00-0003	8/1/2008	Pending	$ 644,639
SOLEDAD UNIFIED	MONTEREY	San Vicente Elementary	61/75440-00-0004	8/1/2008	Pending	$ 476,988
SOLEDAD UNIFIED	MONTEREY	Soledad High	61/75440-00-0005	8/1/2008	Pending	$ 160,008
SOLEDAD UNIFIED	MONTEREY	Ledesma (Frank) Elementary	61/75440-00-0006	8/1/2008	Pending	$ 621,057
ANTIOCH UNIFIED	CONTRA COSTA	Marsh Elementary	61/61648-00-0025	8/4/2008	Pending	$ 24,282
ANTIOCH UNIFIED	CONTRA COSTA	Prospects High (Alternative)	61/61648-00-0026	8/4/2008	Pending	$ 58,044
ANTIOCH UNIFIED	CONTRA COSTA	Fremont Elementary	61/61648-00-0027	8/4/2008	Pending	$ 474,125
ANTIOCH UNIFIED	CONTRA COSTA	Antioch High	61/61648-00-0028	8/4/2008	Pending	$ 859,485
ANTIOCH UNIFIED	CONTRA COSTA	Antioch Middle	61/61648-00-0029	8/4/2008	Pending	$ 307,953
RICHGROVE ELEMENTARY	TULARE	Richgrove Elementary	61/72082-00-0006	8/4/2008	Pending	$ 16,320
RICHGROVE ELEMENTARY	TULARE	Richgrove Elementary	61/72082-00-0007	8/4/2008	Pending	$ 81,600
RICHGROVE ELEMENTARY	TULARE	Richgrove Elementary	61/72082-00-0008	8/4/2008	Pending	$ 6,333
SAN JACINTO UNIFIED	RIVERSIDE	San Jacinto High	61/67249-00-0023	8/4/2008	Pending	$ 32,030
SAN JACINTO UNIFIED	RIVERSIDE	Estudillo (Jose Antonio) Elementary	61/67249-00-0024	8/4/2008	Pending	$ 5,049
SAN JACINTO UNIFIED	RIVERSIDE	Park Hill Elementary	61/67249-00-0025	8/4/2008	Pending	$ 31,950
CAMPBELL UNION ELEMENTARY	SANTA CLARA	Blackford Elementary	61/69393-00-0001	8/5/2008	Pending	$ 233,879
CAMPBELL UNION ELEMENTARY	SANTA CLARA	Blackford Elementary	61/69393-00-0002	8/5/2008	Pending	$ 62,735
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0006	8/5/2008	Pending	$ 8,630,781
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0007	8/5/2008	Pending	$ 2,580,693
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0008	8/5/2008	Pending	$ 2,937,510
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0009	8/5/2008	Pending	$ 8,233,689
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0010	8/5/2008	Pending	$ 5,174,999
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0011	8/5/2008	Pending	$ 2,418,388
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0012	8/5/2008	Pending	$ 556,420

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0013	8/5/2008	Pending	$ 17,219,348
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0014	8/5/2008	Pending	$ 2,045,613
EAST SIDE UNION HIGH	SANTA CLARA	Yerba Buena High	61/69427-00-0015	8/5/2008	Pending	$ 31,719
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0016	8/5/2008	Pending	$ 1,822,204
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0017	8/5/2008	Pending	$ 1,179,251
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0018	8/5/2008	Pending	$ 1,486,094
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0019	8/5/2008	Pending	$ 11,554,547
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0020	8/5/2008	Pending	$ 679,461
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0021	8/5/2008	Pending	$ 287,000
EAST SIDE UNION HIGH	SANTA CLARA	Lick (James) High	61/69427-00-0022	8/5/2008	Pending	$ 55,540
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0023	8/5/2008	Pending	$ 6,091,300
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0024	8/5/2008	Pending	$ 2,558,091
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0025	8/5/2008	Pending	$ 1,866,540
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0026	8/5/2008	Pending	$ 4,369,199
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0027	8/5/2008	Pending	$ 2,030,226
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0028	8/5/2008	Pending	$ 269,166
EAST SIDE UNION HIGH	SANTA CLARA	Overfelt (William C.) High	61/69427-00-0029	8/5/2008	Pending	$ 114,392
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0030	8/5/2008	Pending	$ 1,733,690
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0031	8/5/2008	Pending	$ 1,660,286
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0032	8/5/2008	Pending	$ 771,738
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0033	8/5/2008	Pending	$ 7,876,579
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0034	8/5/2008	Pending	$ 528,714
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0035	8/5/2008	Pending	$ 573,936
EAST SIDE UNION HIGH	SANTA CLARA	Hill (Andrew P.) High	61/69427-00-0036	8/5/2008	Pending	$ 91,972
CENTINELA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0036	8/7/2008	Pending	$ 152,463
LODI UNIFIED	SAN JOAQUIN	Lawrence Elementary	61/68585-00-0081	8/7/2008	Pending	$ 6,486
PITTSBURG UNIFIED	CONTRA COSTA	Parkside Elementary	61/61788-00-0118	8/7/2008	Pending	$ 7,658
WASHINGTON UNIFIED	YOLO	Elkhorn Village Elementary	61/72694-00-0027	8/7/2008	Pending	$ 184,604
SAN FRANCISCO UNIFIED	SAN FRANCISCO	Carver (George Washington) Eleme	61/68478-00-0007	8/8/2008	Pending	$ 662,000
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0015	8/8/2008	Pending	$ 414,448
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0016	8/8/2008	Pending	$ 1,381,387
WOODLAKE UNION HIGH	TULARE	Woodlake High	61/72280-00-0017	8/8/2008	Pending	$ 1,197,183
CALEXICO UNIFIED	IMPERIAL	Calexico High	61/63099-00-0020	8/11/2008	Pending	$ 1,325,449
LODI UNIFIED	SAN JOAQUIN	Wagner-Holt Elementary	61/68585-00-0082	8/11/2008	Pending	$ 496,279
SACRAMENTO CITY UNIFIED	SACRAMENTO	Goethe (Charles M.) Middle	61/67439-00-0270	8/11/2008	Pending	$ 43,164
HAYWARD UNIFIED	ALAMEDA	Lorin A. Eden Elementary	61/61192-00-0005	8/14/2008	Pending	$ 499,381
PITTSBURG UNIFIED	CONTRA COSTA	Parkside Elementary	61/61788-00-0119	8/14/2008	Pending	$ 53,043
SAN DIEGO UNIFIED	SAN DIEGO	Morse Senior High	61/68338-00-0293	8/14/2008	Pending	$ 92,022
TERRA BELLA UNION ELEMENTARY	TULARE	Smith (Carl) Middle	61/72199-00-0002	8/14/2008	Pending	$ 54,405
TERRA BELLA UNION ELEMENTARY	TULARE	Terra Bella Elementary	61/72199-00-0003	8/14/2008	Pending	$ 806,780
PETALUMA CITY SCHOOLS	SONOMA	McKinley Elementary	61/70854-00-0005	8/15/2008	Pending	$ 9,306
PETALUMA CITY SCHOOLS	SONOMA	McDowell Elementary	61/70854-00-0006	8/15/2008	Pending	$ 9,309
SAN DIEGO UNIFIED	SAN DIEGO	Horton Elementary	61/68338-00-0294	8/18/2008	Pending	$ 16,535
SAN JACINTO UNIFIED	RIVERSIDE	Monte Vista Middle	61/67249-00-0026	8/18/2008	Pending	$ 66,641
SAN JACINTO UNIFIED	RIVERSIDE	North Mountain Middle	61/67249-00-0027	8/18/2008	Pending	$ 66,831
SAN JACINTO UNIFIED	RIVERSIDE	San Jacinto Elementary	61/67249-00-0028	8/18/2008	Pending	$ 20,239
SAN JACINTO UNIFIED	RIVERSIDE	Hyatt Elementary	61/67249-00-0029	8/18/2008	Pending	$ 15,650
SAN JACINTO UNIFIED	RIVERSIDE	Hyatt Elementary	61/67249-00-0030	8/18/2008	Pending	$ 399,378
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Rogers (William R.) Elementary	61/69369-00-0025	8/19/2008	Pending	$ 30,750
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Slonaker (Harry) Elementary	61/69369-00-0026	8/19/2008	Pending	$ 36,932
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	George (Joseph) Middle	61/69369-00-0027	8/19/2008	Pending	$ 25,351
PLEASANT VIEW ELEMENTARY	TULARE	Pleasant View Elementary	61/72058-00-0015	8/19/2008	Pending	$ 41,585
SANTA ROSA CITY SCHOOLS	SONOMA	Cook (Lawrence) Middle	61/70920-00-0011	8/19/2008	Pending	$ 5,738
SANTA ROSA CITY SCHOOLS	SONOMA	Cook (Lawrence) Middle	61/70920-00-0012	8/19/2008	Pending	$ 7,075
SANTA ROSA CITY SCHOOLS	SONOMA	Cook (Lawrence) Middle	61/70920-00-0013	8/19/2008	Pending	$ 5,385
SANTA ROSA CITY SCHOOLS	SONOMA	Hilliard Comstock Middle	61/70920-00-0014	8/19/2008	Pending	$ 31,045
SANTA ROSA ELEMENTARY	SONOMA	Lincoln (Abraham) Elementary	61/70912-00-0030	8/19/2008	Pending	$ 14,945
SANTA ROSA ELEMENTARY	SONOMA	Lincoln (Abraham) Elementary	61/70912-00-0031	8/19/2008	Pending	$ 99,740
SANTA ROSA ELEMENTARY	SONOMA	Burbank (Luther) Elementary	61/70912-00-0032	8/19/2008	Pending	$ 3,156
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0033	8/19/2008	Pending	$ 114,266
SANTA ROSA ELEMENTARY	SONOMA	Lincoln (Abraham) Elementary	61/70912-00-0034	8/19/2008	Pending	$ 15,020
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0035	8/19/2008	Pending	$ 2,403
PALO VERDE UNIFIED	RIVERSIDE	Palo Verde High	61/67181-00-0013	8/21/2008	Pending	$ 11,730
FRESNO UNIFIED	FRESNO	Cooper Middle	61/62166-00-0767	8/22/2008	Pending	$ 5,395
FRESNO UNIFIED	FRESNO	Del Mar Elementary	61/62166-00-0768	8/22/2008	Pending	$ 5,043
FRESNO UNIFIED	FRESNO	Ericson Elementary	61/62166-00-0769	8/22/2008	Pending	$ 6,126
FRESNO UNIFIED	FRESNO	Ewing Elementary	61/62166-00-0770	8/22/2008	Pending	$ 7,020
FRESNO UNIFIED	FRESNO	Fort Miller Middle	61/62166-00-0771	8/22/2008	Pending	$ 6,611
FRESNO UNIFIED	FRESNO	Fremont Elementary	61/62166-00-0772	8/22/2008	Pending	$ 35,523
FRESNO UNIFIED	FRESNO	Fresno High	61/62166-00-0773	8/22/2008	Pending	$ 42,458
FRESNO UNIFIED	FRESNO	Academy For New Americans	61/62166-00-0774	8/22/2008	Pending	$ 13,098
FRESNO UNIFIED	FRESNO	Addams Elementary	61/62166-00-0775	8/22/2008	Pending	$ 5,329
FRESNO UNIFIED	FRESNO	Anthony (Susan B.) Elementary	61/62166-00-0776	8/22/2008	Pending	$ 13,834
FRESNO UNIFIED	FRESNO	Aynesworth Elementary	61/62166-00-0777	8/22/2008	Pending	$ 7,109
FRESNO UNIFIED	FRESNO	Backman (Molly S.) Elementary	61/62166-00-0778	8/22/2008	Pending	$ 12,221
FRESNO UNIFIED	FRESNO	Burroughs Elementary	61/62166-00-0779	8/22/2008	Pending	$ 7,574
FRESNO UNIFIED	FRESNO	Calwa Elementary	61/62166-00-0780	8/22/2008	Pending	$ 35,921
FRESNO UNIFIED	FRESNO	Carver Academy	61/62166-00-0781	8/22/2008	Pending	$ 7,120

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District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
FRESNO UNIFIED	FRESNO	Centennial Elementary	61/62166-00-0782	8/22/2008	Pending	$ 7,115
MARYSVILLE JOINT UNIFIED	YUBA	Alicia Intermediate	61/72736-00-0035	8/22/2008	Pending	$ 5,290
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Pala Middle	61/69369-00-0028	8/25/2008	Pending	$ 42,842
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Ocala Middle	61/69369-00-0029	8/25/2008	Pending	$ 73,331
LOS ANGELES UNIFIED	LOS ANGELES	Union Avenue Elementary	61/64733-00-4009	8/25/2008	Pending	$ 131,880
LOS ANGELES UNIFIED	LOS ANGELES	Union Avenue Elementary	61/64733-00-4010	8/25/2008	Pending	$ 4,709
LOS ANGELES UNIFIED	LOS ANGELES	Dayton Heights Elementary	61/64733-00-4011	8/25/2008	Pending	$ 91,984
LOS ANGELES UNIFIED	LOS ANGELES	Bright (Birdielee V.) Elementary	61/64733-00-4012	8/25/2008	Pending	$ 649,400
LOS ANGELES UNIFIED	LOS ANGELES	Franklin (Benjamin) Senior High	61/64733-00-4013	8/25/2008	Pending	$ 61,060
LOS ANGELES UNIFIED	LOS ANGELES	Belmont Senior High	61/64733-00-4014	8/25/2008	Pending	$ 8,970
LOS ANGELES UNIFIED	LOS ANGELES	Fairfax Senior High	61/64733-00-4015	8/25/2008	Pending	$ 47,145
SAN JACINTO UNIFIED	RIVERSIDE	San Jacinto High	61/67249-00-0031	8/25/2008	Pending	$ 387,038
ANAHEIM CITY	ORANGE	Henry (Patrick) Elementary	61/66423-00-0005	8/26/2008	Pending	$ 210,941
ANAHEIM CITY	ORANGE	Madison (James) Elementary	61/66423-00-0006	8/26/2008	Pending	$ 198,466
KEPPEL UNION ELEMENTARY	LOS ANGELES	Lake Los Angeles Elementary	61/64642-00-0047	8/26/2008	Pending	$ 5,202
KEPPEL UNION ELEMENTARY	LOS ANGELES	Almondale Middle	61/64642-00-0048	8/26/2008	Pending	$ 5,118
LINCOLN UNIFIED	SAN JOAQUIN	Williams (John R.)	61/68569-00-0012	8/27/2008	Pending	$ 65,665
SAN DIEGO UNIFIED	SAN DIEGO	Carson Elementary	61/68338-00-0295	8/27/2008	Pending	$ 42,014
SANTA ROSA ELEMENTARY	SONOMA	Lincoln (Abraham) Elementary	61/70912-00-0036	8/27/2008	Pending	$ 11,108
CALEXICO UNIFIED	IMPERIAL	Calexico High	61/63099-00-0021	8/28/2008	Pending	$ 579,399
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	John Kelley Elementary	61/73676-00-0099	8/29/2008	Pending	$ 21,560
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Chavez (Cesar) Elementary	61/73676-00-0100	8/29/2008	Pending	$ 51,372
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Palm View Elementary	61/73676-00-0101	8/29/2008	Pending	$ 188,015
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Coachella Valley High	61/73676-00-0102	8/29/2008	Pending	$ 167,065
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley Elementary	61/71860-00-0142	9/2/2008	Pending	$ 45,763
CUTLER-OROSI JOINT UNIFIED	TULARE	Cutler Elementary	61/71860-00-0143	9/2/2008	Pending	$ 20,917
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0144	9/2/2008	Pending	$ 316,185
EARLIMART ELEMENTARY	TULARE	Earlimart Elementary	61/71902-00-0003	9/2/2008	Pending	$ 46,124
HUENEME ELEMENTARY	VENTURA	Larsen (Ansgar) Elementary	61/72462-00-0003	9/2/2008	Pending	$ 803,762
LINCOLN UNIFIED	SAN JOAQUIN	Williams (John R.)	61/68569-00-0013	9/2/2008	Pending	$ 11,440
WASHINGTON UNIFIED	YOLO	West Sacramento School for Indepe	61/72694-00-0028	9/3/2008	Pending	$ 517,296
BAKERSFIELD CITY ELEMENTARY	KERN	Garza (Ramon) Elementary	61/63321-00-0015	9/4/2008	Pending	$ 29,800
CARUTHERS UNIFIED	FRESNO	Caruthers Elementary	61/75598-00-0014	9/4/2008	Pending	$ 562,520
CARUTHERS UNIFIED	FRESNO	Caruthers Elementary	61/75598-00-0015	9/4/2008	Pending	$ 262,000
CARUTHERS UNIFIED	FRESNO	Caruthers Elementary	61/75598-00-0016	9/4/2008	Pending	$ 91,509
CARUTHERS UNIFIED	FRESNO	Caruthers Elementary	61/75598-00-0017	9/4/2008	Pending	$ 96,773
SAN DIEGO UNIFIED	SAN DIEGO	Mann Middle	61/68338-00-0296	9/4/2008	Pending	$ 37,906
SAN DIEGO UNIFIED	SAN DIEGO	Emerson/Bandini Elementary	61/68338-00-0297	9/8/2008	Pending	$ 31,719
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	61/73932-00-0013	9/9/2008	Pending	$ 101,691
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	61/73932-00-0014	9/9/2008	Pending	$ 44,501
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Wing Lane Elementary	61/73445-00-0011	9/10/2008	Pending	$ 167,334
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Glenelder Elementary	61/73445-00-0012	9/10/2008	Pending	$ 159,008
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Valinda School of Academics	61/73445-00-0013	9/10/2008	Pending	$ 91,411
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Sparks Elementary	61/73445-00-0014	9/10/2008	Pending	$ 165,072
SANTA ROSA CITY SCHOOLS	SONOMA	Hilliard Comstock Middle	61/70920-00-0015	9/10/2008	Pending	$ 260,113
SANTA ROSA ELEMENTARY	SONOMA	Lincoln (Abraham) Elementary	61/70912-00-0037	9/10/2008	Pending	$ 154,058
MARYSVILLE JOINT UNIFIED	YUBA	Cedar Lane Elementary	61/72736-00-0034	9/11/2008	Pending	$ 559,701
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	61/73932-00-0015	9/11/2008	Pending	$ 56,797
REEF-SUNSET UNIFIED	KINGS	Kettleman City Elementary	61/73932-00-0016	9/11/2008	Pending	$ 23,714
BRAWLEY ELEMENTARY	IMPERIAL	Worth (Barbara) Junior High	61/63073-00-0004	9/12/2008	Pending	$ 11,625
SANTA PAULA ELEMENTARY	VENTURA	Webster (Barbara) Elementary	61/72587-00-0012	9/12/2008	Pending	$ 29,175
OCEAN VIEW ELEMENTARY	VENTURA	Tierra Vista Elementary	61/72512-00-0006	9/15/2008	Pending	$ 113,854
OCEAN VIEW ELEMENTARY	VENTURA	Mar Vista Elementary	61/72512-00-0007	9/15/2008	Pending	$ 38,707
SAN DIEGO UNIFIED	SAN DIEGO	Marshall Elementary	61/68338-00-0298	9/15/2008	Pending	$ 115,434
SAN DIEGO UNIFIED	SAN DIEGO	Edison Elementary	61/68338-00-0299	9/22/2008	Pending	$ 27,099
SAN DIEGO UNIFIED	SAN DIEGO	Hoover Senior High	61/68338-00-0300	9/22/2008	Pending	$ 101,954
COMPTON UNIFIED	LOS ANGELES	Whaley Middle	61/73437-00-0213	9/24/2008	Pending	$ 62,700
CALEXICO UNIFIED	IMPERIAL	Calexico High	61/63099-00-0022	9/29/2008	Pending	$ 784,926
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	61/73932-00-0017	9/29/2008	Pending	$ 11,969
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	61/73932-00-0018	9/29/2008	Pending	$ 16,621
LYNWOOD UNIFIED	LOS ANGELES	Lynwood High	61/64774-00-0056	9/30/2008	Pending	$ 1,125,001
HUENEME ELEMENTARY	VENTURA	Sunkist Elementary	61/72462-00-0004	10/1/2008	Pending	$ 187,619
HUENEME ELEMENTARY	VENTURA	Larsen (Ansgar) Elementary	61/72462-00-0005	10/1/2008	Pending	$ 82,851
HUENEME ELEMENTARY	VENTURA	Haycox (Art) Elementary	61/72462-00-0006	10/1/2008	Pending	$ 68,409
HUENEME ELEMENTARY	VENTURA	Hathaway (Julien) Elementary	61/72462-00-0007	10/1/2008	Pending	$ 44,973
CUYAMA JOINT UNIFIED	SANTA BARBARA	Cuyama Elementary	61/75010-00-0001	10/2/2008	Pending	$ 15,489
SAN DIEGO UNIFIED	SAN DIEGO	Ibarra (Herbert) Elementary	61/68338-00-0301	10/2/2008	Pending	$ 8,280
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4016	10/6/2008	Pending	$ 1,426,900
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4017	10/6/2008	Pending	$ 2,069,670
OROVILLE CITY ELEMENTARY	BUTTE	Wyandotte Avenue Elementary	61/61507-00-0006	10/6/2008	Pending	$ 367,062
OROVILLE CITY ELEMENTARY	BUTTE	Oakdale Heights Elementary	61/61507-00-0007	10/6/2008	Pending	$ 275,821
PERRIS ELEMENTARY	RIVERSIDE	Park Avenue Elementary	61/67199-00-0007	10/6/2008	Pending	$ 624,979
PERRIS ELEMENTARY	RIVERSIDE	Nan Sanders Elementary	61/67199-00-0008	10/6/2008	Pending	$ 350,308
PERRIS ELEMENTARY	RIVERSIDE	Good Hope Elementary	61/67199-00-0009	10/6/2008	Pending	$ 675,198
PERRIS ELEMENTARY	RIVERSIDE	Perris Elementary	61/67199-00-0010	10/6/2008	Pending	$ 600,220
PERRIS ELEMENTARY	RIVERSIDE	Palms Elementary	61/67199-00-0011	10/6/2008	Pending	$ 196,199
SAN FRANCISCO UNIFIED	SAN FRANCISCO	Webster (Daniel) Elementary	61/68478-00-0008	10/7/2008	Pending	$ 300,000
ROUND VALLEY UNIFIED	MENDOCINO	Round Valley Elementary	61/65607-00-0001	10/8/2008	Pending	$ 28,092

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	West Shores High	61/73676-00-0103	10/9/2008	Pending	$ 77,650
CARUTHERS UNIFIED	FRESNO	Caruthers Elementary	61/75598-00-0018	10/10/2008	Pending	$ 32,257
CARUTHERS UNIFIED	FRESNO	Caruthers Elementary	61/75598-00-0019	10/10/2008	Pending	$ 93,340
FRESNO UNIFIED	FRESNO	Elementary	61/62166-00-0783	10/10/2008	Pending	$ 10,783
FRESNO UNIFIED	FRESNO	Wishon Elementary	61/62166-00-0784	10/10/2008	Pending	$ 8,935
FRESNO UNIFIED	FRESNO	Wilson Elementary	61/62166-00-0785	10/10/2008	Pending	$ 5,650
FRESNO UNIFIED	FRESNO	Yokomi (Akira) Elementary	61/62166-00-0786	10/10/2008	Pending	$ 6,819
FRESNO UNIFIED	FRESNO	Yosemite Middle	61/62166-00-0787	10/10/2008	Pending	$ 10,160
FRESNO UNIFIED	FRESNO	Roosevelt High	61/62166-00-0788	10/10/2008	Pending	$ 27,157
FRESNO UNIFIED	FRESNO	Rowell Elementary	61/62166-00-0789	10/10/2008	Pending	$ 12,306
FRESNO UNIFIED	FRESNO	Scandinavian Middle	61/62166-00-0790	10/10/2008	Pending	$ 9,385
FRESNO UNIFIED	FRESNO	Sequoia Middle	61/62166-00-0791	10/10/2008	Pending	$ 11,687
FRESNO UNIFIED	FRESNO	Storey (Edith B.) Elementary	61/62166-00-0792	10/10/2008	Pending	$ 11,674
FRESNO UNIFIED	FRESNO	Sunnyside High	61/62166-00-0793	10/10/2008	Pending	$ 19,060
FRESNO UNIFIED	FRESNO	Greenberg (David L.) Elementary	61/62166-00-0794	10/10/2008	Pending	$ 5,257
FRESNO UNIFIED	FRESNO	Hamilton Elementary	61/62166-00-0795	10/10/2008	Pending	$ 29,493
FRESNO UNIFIED	FRESNO	Heaton Elementary	61/62166-00-0796	10/10/2008	Pending	$ 15,003
FRESNO UNIFIED	FRESNO	Hidalgo (Miguel) Elementary	61/62166-00-0797	10/10/2008	Pending	$ 10,936
FRESNO UNIFIED	FRESNO	Homan Elementary	61/62166-00-0798	10/10/2008	Pending	$ 6,987
FRESNO UNIFIED	FRESNO	Hoover High	61/62166-00-0799	10/10/2008	Pending	$ 30,066
FRESNO UNIFIED	FRESNO	Jefferson Elementary	61/62166-00-0800	10/10/2008	Pending	$ 7,628
FRESNO UNIFIED	FRESNO	King Elementary	61/62166-00-0801	10/10/2008	Pending	$ 10,614
FRESNO UNIFIED	FRESNO	Kings Canyon Middle	61/62166-00-0802	10/10/2008	Pending	$ 10,765
FRESNO UNIFIED	FRESNO	Sunset Elementary	61/62166-00-0803	10/10/2008	Pending	$ 5,600
FRESNO UNIFIED	FRESNO	Tehipite Middle	61/62166-00-0804	10/10/2008	Pending	$ 12,590
FRESNO UNIFIED	FRESNO	Terronez (Elizabeth) Middle	61/62166-00-0805	10/10/2008	Pending	$ 13,373
FRESNO UNIFIED	FRESNO	Tioga Middle	61/62166-00-0806	10/10/2008	Pending	$ 13,318
FRESNO UNIFIED	FRESNO	Wawona Middle	61/62166-00-0807	10/10/2008	Pending	$ 18,382
FRESNO UNIFIED	FRESNO	Webster Elementary	61/62166-00-0808	10/10/2008	Pending	$ 25,419
FRESNO UNIFIED	FRESNO	Winchell Elementary	61/62166-00-0809	10/10/2008	Pending	$ 30,620
FRESNO UNIFIED	FRESNO	Muir Elementary	61/62166-00-0810	10/10/2008	Pending	$ 10,579
FRESNO UNIFIED	FRESNO	Norseman Elementary	61/62166-00-0811	10/10/2008	Pending	$ 8,073
FRESNO UNIFIED	FRESNO	Pyle Elementary	61/62166-00-0812	10/10/2008	Pending	$ 24,771
FRESNO UNIFIED	FRESNO	Roeding Elementary	61/62166-00-0813	10/10/2008	Pending	$ 14,595
FRESNO UNIFIED	FRESNO	Mayfair Elementary	61/62166-00-0814	10/10/2008	Pending	$ 8,126
FRESNO UNIFIED	FRESNO	McLane High	61/62166-00-0815	10/10/2008	Pending	$ 25,089
FRESNO UNIFIED	FRESNO	Kirk Elementary	61/62166-00-0816	10/10/2008	Pending	$ 7,536
FRESNO UNIFIED	FRESNO	Lane Elementary	61/62166-00-0817	10/10/2008	Pending	$ 11,642
FRESNO UNIFIED	FRESNO	Leavenworth (Ann B.) Elementary	61/62166-00-0818	10/10/2008	Pending	$ 14,872
FRESNO UNIFIED	FRESNO	Lowell Elementary	61/62166-00-0819	10/10/2008	Pending	$ 11,327
PITTSBURG UNIFIED	CONTRA COSTA	Parkside Elementary	61/61788-00-0120	10/10/2008	Pending	$ 18,681
OXNARD ELEMENTARY	VENTURA	Chavez (Cesar E.) Elementary	61/72538-00-0024	10/14/2008	Pending	$ 18,000
OXNARD ELEMENTARY	VENTURA	Driffill Elementary	61/72538-00-0025	10/14/2008	Pending	$ 306,166
OXNARD ELEMENTARY	VENTURA	Elm Street Elementary	61/72538-00-0026	10/14/2008	Pending	$ 224,616
OXNARD ELEMENTARY	VENTURA	Curren Elementary	61/72538-00-0027	10/14/2008	Pending	$ 289,247
OXNARD ELEMENTARY	VENTURA	Sierra Linda Elementary	61/72538-00-0028	10/14/2008	Pending	$ 569,916
OXNARD ELEMENTARY	VENTURA	McKinna Elementary	61/72538-00-0029	10/14/2008	Pending	$ 179,664
OXNARD ELEMENTARY	VENTURA	Kamala Elementary	61/72538-00-0030	10/14/2008	Pending	$ 276,546
OXNARD ELEMENTARY	VENTURA	Lemonwood Elementary	61/72538-00-0031	10/14/2008	Pending	$ 578,392
OXNARD ELEMENTARY	VENTURA	Marina West Elementary	61/72538-00-0032	10/14/2008	Pending	$ 289,247
KINGS CANYON JOINT UNIFIED	FRESNO	McCord Elementary	61/62265-00-0032	10/15/2008	Pending	$ 17,939
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	Nystrom Elementary	61/61796-00-0159	10/15/2008	Pending	$ 1,407,875
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	Chavez (Cesar E.) Elementary	61/61796-00-0160	10/15/2008	Pending	$ 62,735
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	Portola Junior High	61/61796-00-0161	10/15/2008	Pending	$ 858,514
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	Lovonya DeJean Middle	61/61796-00-0162	10/15/2008	Pending	$ 49,969
WEST CONTRA COSTA UNIFIED	CONTRA COSTA	El Sobrante Elementary	61/61796-00-0163	10/15/2008	Pending	$ 2,978,015
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	La Puente High	61/73445-00-0015	10/16/2008	Pending	$ 2,047,919
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	La Puente High	61/73445-00-0016	10/16/2008	Pending	$ 312,805
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	La Puente High	61/73445-00-0017	10/16/2008	Pending	$ 154,960
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	La Puente High	61/73445-00-0018	10/16/2008	Pending	$ 259,188
KINGS CANYON JOINT UNIFIED	FRESNO	Conner (A. L.) Elementary	61/62265-00-0033	10/16/2008	Pending	$ 8,652
LOS ANGELES UNIFIED	LOS ANGELES	Bethune (Mary McLeod) Middle	61/64733-00-4247	10/16/2008	Pending	$ 53,811
LOS ANGELES UNIFIED	LOS ANGELES	Rosemont Avenue Elementary	61/64733-00-4248	10/16/2008	Pending	$ 32,002
LOS ANGELES UNIFIED	LOS ANGELES	Virgil Middle	61/64733-00-4249	10/16/2008	Pending	$ 6,960
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-4250	10/16/2008	Pending	$ 569,326
SAN JACINTO UNIFIED	RIVERSIDE	Monte Vista Middle	61/67249-00-0032	10/16/2008	Pending	$ 76,688
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0038	10/16/2008	Pending	$ 13,056
COACHELLA VALLEY JOINT UNIFIED	RIVERSIDE	Martinez (Saul) Elementary	61/73676-00-0104	10/17/2008	Pending	$ 6,150
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0010	10/17/2008	Pending	$ 13,783
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0011	10/17/2008	Pending	$ 41,575
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0012	10/17/2008	Pending	$ 125,970
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0013	10/17/2008	Pending	$ 11,424
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0014	10/17/2008	Pending	$ 1,135,000
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0015	10/17/2008	Pending	$ 20,094
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0016	10/17/2008	Pending	$ 27,137
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0017	10/17/2008	Pending	$ 403,700
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0018	10/17/2008	Pending	$ 55,590
MERCED CITY ELEMENTARY	MERCED	Hoover (Herbert) Middle	61/65771-00-0019	10/17/2008	Pending	$ 64,315

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
MERCED CITY ELEMENTARY	MERCED	Wright (Charles) Elementary	61/65771-00-0020	10/17/2008	Pending	$ 11,659
MERCED CITY ELEMENTARY	MERCED	Wright (Charles) Elementary	61/65771-00-0021	10/17/2008	Pending	$ 75,781
MERCED CITY ELEMENTARY	MERCED	Wright (Charles) Elementary	61/65771-00-0022	10/17/2008	Pending	$ 15,059
MERCED CITY ELEMENTARY	MERCED	Burbank (Luther) Elementary	61/65771-00-0023	10/17/2008	Pending	$ 39,107
MERCED CITY ELEMENTARY	MERCED	Burbank (Luther) Elementary	61/65771-00-0024	10/17/2008	Pending	$ 10,300
MERCED CITY ELEMENTARY	MERCED	Burbank (Luther) Elementary	61/65771-00-0025	10/17/2008	Pending	$ 4,819
MERCED CITY ELEMENTARY	MERCED	Burbank (Luther) Elementary	61/65771-00-0026	10/17/2008	Pending	$ 12,648
MERCED CITY ELEMENTARY	MERCED	Muir (John) Elementary	61/65771-00-0027	10/17/2008	Pending	$ 644,620
MERCED CITY ELEMENTARY	MERCED	Tenaya Middle	61/65771-00-0028	10/17/2008	Pending	$ 56,004
MERCED CITY ELEMENTARY	MERCED	Tenaya Middle	61/65771-00-0029	10/17/2008	Pending	$ 1,347,000
MERCED CITY ELEMENTARY	MERCED	Muir (John) Elementary	61/65771-00-0030	10/17/2008	Pending	$ 17,028
MERCED CITY ELEMENTARY	MERCED	Muir (John) Elementary	61/65771-00-0031	10/17/2008	Pending	$ 10,169
MERCED CITY ELEMENTARY	MERCED	Muir (John) Elementary	61/65771-00-0032	10/17/2008	Pending	$ 60,937
MERCED CITY ELEMENTARY	MERCED	Stowell (Don) Elementary	61/65771-00-0033	10/17/2008	Pending	$ 15,027
TULARE CITY ELEMENTARY	TULARE	Lincoln Elementary	61/72231-00-0008	10/17/2008	Pending	$ 62,190
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	61/68130-00-0004	10/20/2008	Pending	$ 1,393,840
WASHINGTON UNION HIGH	FRESNO	Washington High	61/62521-00-0001	10/22/2008	Pending	$ 537,901
LOS ANGELES UNIFIED	LOS ANGELES	Berendo Middle	61/64733-00-4018	10/23/2008	Pending	$ 74,024
PITTSBURG UNIFIED	CONTRA COSTA	Parkside Elementary	61/61788-00-0121	10/23/2008	Pending	$ 110,080
SAN FRANCISCO UNIFIED	SAN FRANCISCO	Visitacion Valley Middle	61/68478-00-0009	10/23/2008	Pending	$ 146,000
CHICO UNIFIED	BUTTE	Chapman Elementary	61/61424-00-0031	10/28/2008	Pending	$ 71,941
EASTSIDE UNION ELEMENTARY	LOS ANGELES	Tierra Bonita North Elementary	61/64477-00-0001	10/28/2008	Pending	$ 404,918
EASTSIDE UNION ELEMENTARY	LOS ANGELES	Eastside Elementary	61/64477-00-0002	10/28/2008	Pending	$ 166,247
EASTSIDE UNION ELEMENTARY	LOS ANGELES	Tierra Bonita North Elementary	61/64477-00-0003	10/28/2008	Pending	$ 207,691
EASTSIDE UNION ELEMENTARY	LOS ANGELES	Tierra Bonita North Elementary	61/64477-00-0004	10/28/2008	Pending	$ 736,039
EASTSIDE UNION ELEMENTARY	LOS ANGELES	Eastside Elementary	61/64477-00-0005	10/28/2008	Pending	$ 811,116
SAN DIEGO UNIFIED	SAN DIEGO	Burbank Elementary	61/68338-00-0302	10/28/2008	Pending	$ 5,981
SANTA ANA UNIFIED	ORANGE	Valley High	61/66670-00-0084	10/28/2008	Pending	$ 5,839,874
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4019	10/30/2008	Pending	$ 43,640
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4020	10/30/2008	Pending	$ 278,810
LOS ANGELES UNIFIED	LOS ANGELES	Kennedy (John F.) High	61/64733-00-4021	10/30/2008	Pending	$ 670,081
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4022	10/30/2008	Pending	$ 18,040
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4023	10/30/2008	Pending	$ 1,265,670
LOS ANGELES UNIFIED	LOS ANGELES	Lorena Street Elementary	61/64733-00-4024	10/30/2008	Pending	$ 169,497
SAN DIEGO UNIFIED	SAN DIEGO	Wilson Middle	61/68338-00-0303	10/30/2008	Pending	$ 6,744
CHULA VISTA ELEMENTARY	SAN DIEGO	Vista Square Elementary	61/68023-00-0021	10/31/2008	Pending	$ 445,138
MIDDLETOWN UNIFIED	LAKE	Cannon (Minnie) Elementary	61/64055-00-0002	10/31/2008	Pending	$ 372,699
SAN DIEGO UNIFIED	SAN DIEGO	Adams Elementary	61/68338-00-0304	10/31/2008	Pending	$ 5,913
SAN DIEGO UNIFIED	SAN DIEGO	Audubon Elementary	61/68338-00-0305	11/5/2008	Pending	$ 5,209
SAN DIEGO UNIFIED	SAN DIEGO	Baker Elementary	61/68338-00-0306	11/5/2008	Pending	$ 8,961
SEELEY UNION ELEMENTARY	IMPERIAL	Seeley Elementary	61/63222-00-0001	11/6/2008	Pending	$ 462,898
PALM SPRINGS UNIFIED	RIVERSIDE	Cathedral City High	61/67173-00-0002	11/7/2008	Pending	$ 1,392,934
HESPERIA UNIFIED	SAN BERNARDINO	Hesperia Junior High	61/75044-00-0001	11/10/2008	Pending	$ 142,794
MCFARLAND UNIFIED	KERN	McFarland High	61/73908-00-0003	11/10/2008	Pending	$ 37,170
SAN DIEGO UNIFIED	SAN DIEGO	Balboa Elementary YR	61/68338-00-0307	11/10/2008	Pending	$ 11,844
KINGS CANYON JOINT UNIFIED	FRESNO	Lincoln Elementary	61/62265-00-0034	11/12/2008	Pending	$ 148,494
LONG BEACH UNIFIED	LOS ANGELES	Franklin Middle	61/64725-00-0046	11/12/2008	Pending	$ 111,390
LONG BEACH UNIFIED	LOS ANGELES	Butler (Mary) Elementary	61/64725-00-0047	11/12/2008	Pending	$ 37,449
LONG BEACH UNIFIED	LOS ANGELES	Burnett Elementary	61/64725-00-0048	11/12/2008	Pending	$ 215,580
LONG BEACH UNIFIED	LOS ANGELES	Burnett Elementary	61/64725-00-0049	11/12/2008	Pending	$ 130,000
SANTA ROSA ELEMENTARY	SONOMA	Lincoln (Abraham) Elementary	61/70912-00-0039	11/13/2008	Pending	$ 71,103
LONG BEACH UNIFIED	LOS ANGELES	Garfield Elementary	61/64725-00-0050	11/14/2008	Pending	$ 193,897
LONG BEACH UNIFIED	LOS ANGELES	Garfield Elementary	61/64725-00-0051	11/14/2008	Pending	$ 489,039
LONG BEACH UNIFIED	LOS ANGELES	Jefferson Leadership Academies	61/64725-00-0052	11/14/2008	Pending	$ 249,060
LONG BEACH UNIFIED	LOS ANGELES	Jefferson Leadership Academies	61/64725-00-0053	11/14/2008	Pending	$ 271,080
LONG BEACH UNIFIED	LOS ANGELES	Powell (Colin L.) Academy for Succe	61/64725-00-0054	11/14/2008	Pending	$ 198,412
LONG BEACH UNIFIED	LOS ANGELES	Willard Elementary	61/64725-00-0055	11/14/2008	Pending	$ 54,208
LONG BEACH UNIFIED	LOS ANGELES	Washington Middle	61/64725-00-0056	11/14/2008	Pending	$ 336,870
RIO ELEMENTARY	VENTURA	Rio Real Elementary	61/72561-00-0001	11/14/2008	Pending	$ 104,257
RIO ELEMENTARY	VENTURA	Rio del Valle Junior High	61/72561-00-0002	11/14/2008	Pending	$ 143,775
RIO ELEMENTARY	VENTURA	Rio Plaza Elementary	61/72561-00-0003	11/14/2008	Pending	$ 144,820
FAIRFAX ELEMENTARY	KERN	Fairfax Middle	61/63461-00-0005	11/17/2008	Pending	$ 1,190,971
FAIRFAX ELEMENTARY	KERN	Fairfax Middle	61/63461-00-0006	11/17/2008	Pending	$ 176,559
FAIRFAX ELEMENTARY	KERN	Virginia Avenue Elementary	61/63461-00-0007	11/17/2008	Pending	$ 1,190,971
FAIRFAX ELEMENTARY	KERN	Virginia Avenue Elementary	61/63461-00-0008	11/17/2008	Pending	$ 190,216
LONG BEACH UNIFIED	LOS ANGELES	Lincoln Elementary	61/64725-00-0041	11/17/2008	Pending	$ 132,210
LONG BEACH UNIFIED	LOS ANGELES	Jordan High	61/64725-00-0042	11/17/2008	Pending	$ 167,307
LONG BEACH UNIFIED	LOS ANGELES	Jordan High	61/64725-00-0043	11/17/2008	Pending	$ 211,330
LONG BEACH UNIFIED	LOS ANGELES	Jordan High	61/64725-00-0044	11/17/2008	Pending	$ 260,520
LONG BEACH UNIFIED	LOS ANGELES	Jordan High	61/64725-00-0045	11/17/2008	Pending	$ 787,215
PARAMOUNT UNIFIED	LOS ANGELES	Alondra (Elementary)	61/64873-00-0003	11/17/2008	Pending	$ 19,183
PARAMOUNT UNIFIED	LOS ANGELES	Collins (Captain Raymond)	61/64873-00-0004	11/17/2008	Pending	$ 37,508
PARAMOUNT UNIFIED	LOS ANGELES	Keppel (Mark) Elementary	61/64873-00-0005	11/17/2008	Pending	$ 17,255
PARAMOUNT UNIFIED	LOS ANGELES	Lakewood Elementary	61/64873-00-0006	11/17/2008	Pending	$ 13,377
PARAMOUNT UNIFIED	LOS ANGELES	Jackson (Leona)	61/64873-00-0007	11/17/2008	Pending	$ 7,866
PARAMOUNT UNIFIED	LOS ANGELES	Mokler (Major Lynn) Elementary	61/64873-00-0008	11/17/2008	Pending	$ 27,077
PARAMOUNT UNIFIED	LOS ANGELES	Paramount Park	61/64873-00-0009	11/17/2008	Pending	$ 7,651
PARAMOUNT UNIFIED	LOS ANGELES	Roosevelt (Theodore) Elementary	61/64873-00-0010	11/17/2008	Pending	$ 2,657

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
PARAMOUNT UNIFIED	LOS ANGELES	Wirtz (Harry) Elementary	61/64873-00-0011	11/17/2008	Pending	$ 5,370
PARAMOUNT UNIFIED	LOS ANGELES	Frank J. Zamboni	61/64873-00-0012	11/17/2008	Pending	$ 2,323
LE GRAND UNION HIGH	MERCED	Le Grand High	61/65730-00-0002	11/19/2008	Pending	$ 96,344
LE GRAND UNION HIGH	MERCED	Le Grand High	61/65730-00-0003	11/19/2008	Pending	$ 15,441
LONG BEACH UNIFIED	LOS ANGELES	Garfield Elementary	61/64725-00-0057	11/19/2008	Pending	$ 117,152
LONG BEACH UNIFIED	LOS ANGELES	Jefferson Leadership Academies	61/64725-00-0058	11/19/2008	Pending	$ 206,685
LONG BEACH UNIFIED	LOS ANGELES	Jefferson Leadership Academies	61/64725-00-0059	11/19/2008	Pending	$ 286,245
LONG BEACH UNIFIED	LOS ANGELES	Lincoln Elementary	61/64725-00-0060	11/19/2008	Pending	$ 180,570
LONG BEACH UNIFIED	LOS ANGELES	McKinley Elementary	61/64725-00-0061	11/19/2008	Pending	$ 212,634
ROUND VALLEY UNIFIED	MENDOCINO	Round Valley Elementary	61/65607-00-0002	11/19/2008	Pending	$ 61,122
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Arbuckle (Clyde) Elementary	61/69369-00-0030	11/20/2008	Pending	$ 2,128,886
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Rogers (William R.) Elementary	61/69369-00-0031	11/20/2008	Pending	$ 3,026,877
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Slonaker (Harry) Elementary	61/69369-00-0032	11/20/2008	Pending	$ 2,973,666
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Dorsa (A. J.) Elementary	61/69369-00-0033	11/20/2008	Pending	$ 3,246,601
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Fischer (Clyde L.) Middle	61/69369-00-0034	11/20/2008	Pending	$ 2,276,197
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Pala Middle	61/69369-00-0035	11/20/2008	Pending	$ 3,748,959
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	George (Joseph) Middle	61/69369-00-0036	11/20/2008	Pending	$ 3,262,103
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Goss (Mildred) Elementary	61/69369-00-0037	11/20/2008	Pending	$ 1,916,424
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Meyer (Donald J.) Elementary	61/69369-00-0038	11/20/2008	Pending	$ 2,610,576
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Cureton (Horace) Elementary	61/69369-00-0039	11/20/2008	Pending	$ 3,161,515
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Hubbard (O. S.) Elementary	61/69369-00-0040	11/20/2008	Pending	$ 2,107,541
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Chavez (Cesar) Elementary	61/69369-00-0041	11/20/2008	Pending	$ 2,975,312
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Ocala Middle	61/69369-00-0042	11/20/2008	Pending	$ 3,860,647
SAN DIEGO UNIFIED	SAN DIEGO	Bell Junior High	61/68338-00-0308	11/20/2008	Pending	$ 5,839
CUTLER-OROSI JOINT UNIFIED	TULARE	El Monte Jr. High	61/71860-00-0145	11/24/2008	Pending	$ 17,586
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0146	11/24/2008	Pending	$ 24,476
CUTLER-OROSI JOINT UNIFIED	TULARE	Cutler Elementary	61/71860-00-0147	11/24/2008	Pending	$ 11,048
SAN DIEGO UNIFIED	SAN DIEGO	Clairemont Senior High	61/68338-00-0309	11/24/2008	Pending	$ 72,588
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	61/68130-00-0005	11/26/2008	Pending	$ 583,200
SAN DIEGO UNIFIED	SAN DIEGO	Central Elementary	61/68338-00-0310	12/1/2008	Pending	$ 7,003
JEFFERSON UNION HIGH	SAN MATEO	Jefferson High	61/68924-00-0001	12/2/2008	Pending	$ 218,696
SANTA ROSA CITY SCHOOLS	SONOMA	Hilliard Comstock Middle	61/70920-00-0016	12/4/2008	Pending	$ 1,073,126
SANTA ROSA ELEMENTARY	SONOMA	Monroe (James) Elementary	61/70912-00-0040	12/4/2008	Pending	$ 23,720
SAN DIEGO UNIFIED	SAN DIEGO	School of Multimedia & Visual Arts a	61/68338-00-0312	12/5/2008	Pending	$ 31,435
TULARE CITY ELEMENTARY	TULARE	Mulcahy Middle	61/72231-00-0009	12/8/2008	Pending	$ 98,430
PATTERSON JOINT UNIFIED	STANISLAUS	Grayson Charter	61/71217-00-0006	12/10/2008	Pending	$ 629,731
PATTERSON JOINT UNIFIED	STANISLAUS	Grayson Charter	61/71217-00-0007	12/10/2008	Pending	$ 165,815
PATTERSON JOINT UNIFIED	STANISLAUS	Grayson Charter	61/71217-00-0008	12/10/2008	Pending	$ 880,562
PATTERSON JOINT UNIFIED	STANISLAUS	Grayson Charter	61/71217-00-0009	12/10/2008	Pending	$ 176,018
PATTERSON JOINT UNIFIED	STANISLAUS	Grayson Charter	61/71217-00-0010	12/10/2008	Pending	$ 169,496
PATTERSON JOINT UNIFIED	STANISLAUS	Las Palmas Elementary	61/71217-00-0011	12/10/2008	Pending	$ 280,588
PATTERSON JOINT UNIFIED	STANISLAUS	Las Palmas Elementary	61/71217-00-0012	12/10/2008	Pending	$ 220,528
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0013	12/10/2008	Pending	$ 336,800
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0014	12/10/2008	Pending	$ 460,844
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0015	12/10/2008	Pending	$ 815,857
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0016	12/10/2008	Pending	$ 376,684
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0017	12/10/2008	Pending	$ 244,598
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0018	12/10/2008	Pending	$ 142,800
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0019	12/10/2008	Pending	$ 131,456
PATTERSON JOINT UNIFIED	STANISLAUS	Northmead Elementary	61/71217-00-0020	12/10/2008	Pending	$ 203,017
SAN DIEGO UNIFIED	SAN DIEGO	Edison Elementary	61/68338-00-0311	12/10/2008	Pending	$ 12,243
LOS ANGELES UNIFIED	LOS ANGELES	Aragon Avenue Elementary	61/64733-00-4025	12/15/2008	Pending	$ 13,800
LOS ANGELES UNIFIED	LOS ANGELES	Virgil Middle	61/64733-00-4026	12/15/2008	Pending	$ 27,497
LOS ANGELES UNIFIED	LOS ANGELES	Rowan Avenue Elementary	61/64733-00-4027	12/15/2008	Pending	$ 43,824
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-4028	12/15/2008	Pending	$ 6,854
LOS ANGELES UNIFIED	LOS ANGELES	Northridge Middle	61/64733-00-4029	12/15/2008	Pending	$ 1,064,099
LOS ANGELES UNIFIED	LOS ANGELES	State Street Elementary	61/64733-00-4030	12/15/2008	Pending	$ 374,249
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Seventh Street Eleme	61/64733-00-4031	12/15/2008	Pending	$ 7,163
LOS ANGELES UNIFIED	LOS ANGELES	Tenth Street Elementary	61/64733-00-4032	12/15/2008	Pending	$ 18,272
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Sixteenth Street Eleme	61/64733-00-4033	12/15/2008	Pending	$ 8,695
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Eighteenth Street	61/64733-00-4034	12/15/2008	Pending	$ 7,435
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Twenty-Second Street	61/64733-00-4035	12/15/2008	Pending	$ 9,638
LOS ANGELES UNIFIED	LOS ANGELES	One Hundred Thirty-Fifth Street Elen	61/64733-00-4036	12/15/2008	Pending	$ 7,006
LOS ANGELES UNIFIED	LOS ANGELES	First Street Elementary	61/64733-00-4037	12/15/2008	Pending	$ 9,776
LOS ANGELES UNIFIED	LOS ANGELES	Twentieth Street Elementary	61/64733-00-4038	12/15/2008	Pending	$ 6,980
LOS ANGELES UNIFIED	LOS ANGELES	Twenty-Fourth Street Elementary	61/64733-00-4039	12/15/2008	Pending	$ 7,940
LOS ANGELES UNIFIED	LOS ANGELES	Twenty-Eighth Street Elementary	61/64733-00-4040	12/15/2008	Pending	$ 6,093
LOS ANGELES UNIFIED	LOS ANGELES	Thirty-Second St. USC Performing A	61/64733-00-4041	12/15/2008	Pending	$ 5,353
LOS ANGELES UNIFIED	LOS ANGELES	Forty-Ninth Street Elementary	61/64733-00-4042	12/15/2008	Pending	$ 11,449
LOS ANGELES UNIFIED	LOS ANGELES	Fifty-Second Street Elementary	61/64733-00-4043	12/15/2008	Pending	$ 16,532
LOS ANGELES UNIFIED	LOS ANGELES	Fifty-Ninth Street Elementary	61/64733-00-4044	12/15/2008	Pending	$ 12,905
LOS ANGELES UNIFIED	LOS ANGELES	Sixty-Sixth Street Elementary	61/64733-00-4045	12/15/2008	Pending	$ 5,551
LOS ANGELES UNIFIED	LOS ANGELES	Sixty-Eighth Street Elementary	61/64733-00-4046	12/15/2008	Pending	$ 8,371
LOS ANGELES UNIFIED	LOS ANGELES	Sixth Avenue Elementary	61/64733-00-4047	12/15/2008	Pending	$ 8,416
LOS ANGELES UNIFIED	LOS ANGELES	Seventy-Fourth Street Elementary	61/64733-00-4048	12/15/2008	Pending	$ 8,628
LOS ANGELES UNIFIED	LOS ANGELES	Seventy-Fifth Street Elementary	61/64733-00-4049	12/15/2008	Pending	$ 17,977
LOS ANGELES UNIFIED	LOS ANGELES	Ninety-Third Street Elementary	61/64733-00-4050	12/15/2008	Pending	$ 7,559
LOS ANGELES UNIFIED	LOS ANGELES	Ninth Street Elementary	61/64733-00-4051	12/15/2008	Pending	$ 6,796

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
LOS ANGELES UNIFIED	LOS ANGELES	Adams (John) Middle	61/64733-00-4052	12/15/2008	Pending	$ 14,314
LOS ANGELES UNIFIED	LOS ANGELES	Alexandria Avenue Elementary	61/64733-00-4053	12/15/2008	Pending	$ 8,101
LOS ANGELES UNIFIED	LOS ANGELES	Angeles Mesa Elementary	61/64733-00-4054	12/15/2008	Pending	$ 12,402
LOS ANGELES UNIFIED	LOS ANGELES	Arlington Heights Elementary	61/64733-00-4055	12/15/2008	Pending	$ 6,997
LOS ANGELES UNIFIED	LOS ANGELES	Ascot Avenue Elementary	61/64733-00-4056	12/15/2008	Pending	$ 9,680
LOS ANGELES UNIFIED	LOS ANGELES	Audubon Middle	61/64733-00-4057	12/15/2008	Pending	$ 24,306
LOS ANGELES UNIFIED	LOS ANGELES	Banning (Phineas) Senior High	61/64733-00-4058	12/15/2008	Pending	$ 10,326
LOS ANGELES UNIFIED	LOS ANGELES	Barton Hill Elementary	61/64733-00-4059	12/15/2008	Pending	$ 6,195
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-4060	12/15/2008	Pending	$ 19,203
LOS ANGELES UNIFIED	LOS ANGELES	Belmont Senior High	61/64733-00-4061	12/15/2008	Pending	$ 49,154
LOS ANGELES UNIFIED	LOS ANGELES	Belvedere Elementary	61/64733-00-4062	12/15/2008	Pending	$ 5,421
LOS ANGELES UNIFIED	LOS ANGELES	Berendo Middle	61/64733-00-4063	12/15/2008	Pending	$ 26,646
LOS ANGELES UNIFIED	LOS ANGELES	Bethune (Mary McLeod) Middle	61/64733-00-4064	12/15/2008	Pending	$ 11,527
LOS ANGELES UNIFIED	LOS ANGELES	Birmingham Senior High	61/64733-00-4065	12/15/2008	Pending	$ 18,861
LOS ANGELES UNIFIED	LOS ANGELES	Blythe Street Elementary	61/64733-00-4066	12/15/2008	Pending	$ 7,010
LOS ANGELES UNIFIED	LOS ANGELES	Broad Avenue Elementary	61/64733-00-4067	12/15/2008	Pending	$ 6,000
LOS ANGELES UNIFIED	LOS ANGELES	Broadous (Hillery T.) Elementary	61/64733-00-4068	12/15/2008	Pending	$ 10,994
LOS ANGELES UNIFIED	LOS ANGELES	Brooklyn Avenue Elementary	61/64733-00-4069	12/15/2008	Pending	$ 12,088
LOS ANGELES UNIFIED	LOS ANGELES	Budlong Avenue Elementary	61/64733-00-4070	12/15/2008	Pending	$ 15,629
LOS ANGELES UNIFIED	LOS ANGELES	Burbank (Luther) Middle	61/64733-00-4071	12/15/2008	Pending	$ 21,279
LOS ANGELES UNIFIED	LOS ANGELES	Burton Street Elementary	61/64733-00-4072	12/15/2008	Pending	$ 14,037
LOS ANGELES UNIFIED	LOS ANGELES	Bushnell Way Elementary	61/64733-00-4073	12/15/2008	Pending	$ 8,497
LOS ANGELES UNIFIED	LOS ANGELES	Byrd (Richard E.) Middle	61/64733-00-4074	12/15/2008	Pending	$ 13,829
LOS ANGELES UNIFIED	LOS ANGELES	Camellia Avenue Elementary	61/64733-00-4075	12/15/2008	Pending	$ 8,086
LOS ANGELES UNIFIED	LOS ANGELES	Canoga Park Elementary	61/64733-00-4076	12/15/2008	Pending	$ 12,408
LOS ANGELES UNIFIED	LOS ANGELES	Canoga Park Senior High	61/64733-00-4077	12/15/2008	Pending	$ 10,564
LOS ANGELES UNIFIED	LOS ANGELES	Carnegie (Andrew) Middle	61/64733-00-4078	12/15/2008	Pending	$ 14,072
LOS ANGELES UNIFIED	LOS ANGELES	Carson Senior High	61/64733-00-4079	12/15/2008	Pending	$ 13,849
LOS ANGELES UNIFIED	LOS ANGELES	Carver (George Washington) Middle	61/64733-00-4080	12/15/2008	Pending	$ 9,985
LOS ANGELES UNIFIED	LOS ANGELES	Chase Street Elementary	61/64733-00-4081	12/15/2008	Pending	$ 12,137
LOS ANGELES UNIFIED	LOS ANGELES	Clay (Henry) Middle	61/64733-00-4082	12/15/2008	Pending	$ 24,549
LOS ANGELES UNIFIED	LOS ANGELES	Mt. Vernon Middle	61/64733-00-4083	12/15/2008	Pending	$ 17,857
LOS ANGELES UNIFIED	LOS ANGELES	Coliseum Street Elementary	61/64733-00-4084	12/15/2008	Pending	$ 6,027
LOS ANGELES UNIFIED	LOS ANGELES	Columbus (Christopher) Middle	61/64733-00-4085	12/15/2008	Pending	$ 7,492
LOS ANGELES UNIFIED	LOS ANGELES	Crenshaw Senior High	61/64733-00-4086	12/15/2008	Pending	$ 35,268
LOS ANGELES UNIFIED	LOS ANGELES	Curtiss (Glenn Hammond) Middle	61/64733-00-4087	12/15/2008	Pending	$ 6,310
LOS ANGELES UNIFIED	LOS ANGELES	Dana (Richard Henry) Middle	61/64733-00-4088	12/15/2008	Pending	$ 9,502
LOS ANGELES UNIFIED	LOS ANGELES	Dayton Heights Elementary	61/64733-00-4089	12/15/2008	Pending	$ 8,976
LOS ANGELES UNIFIED	LOS ANGELES	Dena (Christopher) Elementary	61/64733-00-4090	12/15/2008	Pending	$ 6,195
LOS ANGELES UNIFIED	LOS ANGELES	Dorsey (Susan Miller) Senior High	61/64733-00-4091	12/15/2008	Pending	$ 26,746
LOS ANGELES UNIFIED	LOS ANGELES	Drew (Charles) Middle	61/64733-00-4092	12/15/2008	Pending	$ 38,148
LOS ANGELES UNIFIED	LOS ANGELES	Eastman Avenue Elementary	61/64733-00-4093	12/15/2008	Pending	$ 6,835
LOS ANGELES UNIFIED	LOS ANGELES	Edison (Thomas A.) Middle	61/64733-00-4094	12/15/2008	Pending	$ 12,768
LOS ANGELES UNIFIED	LOS ANGELES	Elizabeth Learning Center	61/64733-00-4095	12/15/2008	Pending	$ 6,953
LOS ANGELES UNIFIED	LOS ANGELES	Emerson (Ralph Waldo) Middle	61/64733-00-4096	12/15/2008	Pending	$ 15,872
LOS ANGELES UNIFIED	LOS ANGELES	Esperanza Elementary	61/64733-00-4097	12/15/2008	Pending	$ 7,081
LOS ANGELES UNIFIED	LOS ANGELES	Euclid Avenue Elementary	61/64733-00-4098	12/15/2008	Pending	$ 5,192
LOS ANGELES UNIFIED	LOS ANGELES	Fairfax Senior High	61/64733-00-4099	12/15/2008	Pending	$ 18,517
LOS ANGELES UNIFIED	LOS ANGELES	Fernangeles Elementary	61/64733-00-4100	12/15/2008	Pending	$ 8,968
LOS ANGELES UNIFIED	LOS ANGELES	Figueroa Street Elementary	61/64733-00-4101	12/15/2008	Pending	$ 12,423
LOS ANGELES UNIFIED	LOS ANGELES	Flournoy (Lovelia P.) Elementary	61/64733-00-4102	12/15/2008	Pending	$ 9,106
LOS ANGELES UNIFIED	LOS ANGELES	Ford Boulevard Elementary	61/64733-00-4103	12/15/2008	Pending	$ 7,917
LOS ANGELES UNIFIED	LOS ANGELES	Foshay Learning Center	61/64733-00-4104	12/15/2008	Pending	$ 11,893
LOS ANGELES UNIFIED	LOS ANGELES	Franklin (Benjamin) Senior High	61/64733-00-4105	12/15/2008	Pending	$ 40,706
LOS ANGELES UNIFIED	LOS ANGELES	Fremont (John C.) Senior High	61/64733-00-4106	12/15/2008	Pending	$ 9,153
LOS ANGELES UNIFIED	LOS ANGELES	Fries Avenue Elementary	61/64733-00-4107	12/15/2008	Pending	$ 6,122
LOS ANGELES UNIFIED	LOS ANGELES	Fulton (Robert) College Preparatory	61/64733-00-4108	12/15/2008	Pending	$ 8,769
LOS ANGELES UNIFIED	LOS ANGELES	Gardena Senior High	61/64733-00-4109	12/15/2008	Pending	$ 7,917
LOS ANGELES UNIFIED	LOS ANGELES	Garfield (James A.) Senior High	61/64733-00-4110	12/15/2008	Pending	$ 11,544
LOS ANGELES UNIFIED	LOS ANGELES	Gompers (Samuel) Middle	61/64733-00-4111	12/15/2008	Pending	$ 10,145
LOS ANGELES UNIFIED	LOS ANGELES	Grand View Boulevard Elementary	61/64733-00-4112	12/15/2008	Pending	$ 6,491
LOS ANGELES UNIFIED	LOS ANGELES	Grant Elementary	61/64733-00-4113	12/15/2008	Pending	$ 16,617
LOS ANGELES UNIFIED	LOS ANGELES	Grant (Ulysses S.) Senior High	61/64733-00-4114	12/15/2008	Pending	$ 16,021
LOS ANGELES UNIFIED	LOS ANGELES	Grape Street Elementary	61/64733-00-4115	12/15/2008	Pending	$ 11,832
LOS ANGELES UNIFIED	LOS ANGELES	Gridley Street Elementary	61/64733-00-4116	12/15/2008	Pending	$ 6,850
LOS ANGELES UNIFIED	LOS ANGELES	Griffith (David Wark) Middle	61/64733-00-4117	12/15/2008	Pending	$ 5,575
LOS ANGELES UNIFIED	LOS ANGELES	Haddon Avenue Elementary	61/64733-00-4118	12/15/2008	Pending	$ 8,577
LOS ANGELES UNIFIED	LOS ANGELES	Hamilton (Alexander) Senior High	61/64733-00-4119	12/15/2008	Pending	$ 21,168
LOS ANGELES UNIFIED	LOS ANGELES	Hammel Street Elementary	61/64733-00-4120	12/15/2008	Pending	$ 5,037
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson New Elementary School 2	61/64733-00-4121	12/15/2008	Pending	$ 8,374
LOS ANGELES UNIFIED	LOS ANGELES	Hazeltine Avenue Elementary	61/64733-00-4122	12/15/2008	Pending	$ 5,772
LOS ANGELES UNIFIED	LOS ANGELES	Heliotrope Avenue Elementary	61/64733-00-4123	12/15/2008	Pending	$ 8,341
LOS ANGELES UNIFIED	LOS ANGELES	Hollenbeck Middle	61/64733-00-4124	12/15/2008	Pending	$ 11,401
LOS ANGELES UNIFIED	LOS ANGELES	Hollywood Senior High	61/64733-00-4125	12/15/2008	Pending	$ 32,607
LOS ANGELES UNIFIED	LOS ANGELES	Hoover Street Elementary	61/64733-00-4126	12/15/2008	Pending	$ 5,968
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-4127	12/15/2008	Pending	$ 13,539
LOS ANGELES UNIFIED	LOS ANGELES	Independence Elementary	61/64733-00-4128	12/15/2008	Pending	$ 6,614
LOS ANGELES UNIFIED	LOS ANGELES	Irving (Washington) Middle	61/64733-00-4129	12/15/2008	Pending	$ 12,392

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson (Thomas) Senior High	61/64733-00-4130	12/15/2008	Pending	$ 18,330
LOS ANGELES UNIFIED	LOS ANGELES	Jordan (David Starr) Senior High	61/64733-00-4131	12/15/2008	Pending	$ 18,111
LOS ANGELES UNIFIED	LOS ANGELES	Griffith Joyner (Florence) Element	61/64733-00-4132	12/15/2008	Pending	$ 7,313
LOS ANGELES UNIFIED	LOS ANGELES	Kennedy (Robert F.) Elementary	61/64733-00-4133	12/15/2008	Pending	$ 5,584
LOS ANGELES UNIFIED	LOS ANGELES	Kennedy (John F.) High	61/64733-00-4134	12/15/2008	Pending	$ 23,712
LOS ANGELES UNIFIED	LOS ANGELES	King (Thomas Starr) Middle	61/64733-00-4135	12/15/2008	Pending	$ 31,516
LOS ANGELES UNIFIED	LOS ANGELES	La Salle Avenue Elementary	61/64733-00-4136	12/15/2008	Pending	$ 6,314
LOS ANGELES UNIFIED	LOS ANGELES	Langdon Avenue Elementary	61/64733-00-4137	12/15/2008	Pending	$ 12,406
LOS ANGELES UNIFIED	LOS ANGELES	Le Conte (Joseph) Middle	61/64733-00-4138	12/15/2008	Pending	$ 9,296
LOS ANGELES UNIFIED	LOS ANGELES	Liggett Street Elementary	61/64733-00-4139	12/15/2008	Pending	$ 16,683
LOS ANGELES UNIFIED	LOS ANGELES	Lincoln (Abraham) Senior High	61/64733-00-4140	12/15/2008	Pending	$ 5,150
LOS ANGELES UNIFIED	LOS ANGELES	Locke (Alain Leroy) Senior High	61/64733-00-4141	12/15/2008	Pending	$ 26,528
LOS ANGELES UNIFIED	LOS ANGELES	Lockwood Avenue Elementary	61/64733-00-4142	12/15/2008	Pending	$ 9,703
LOS ANGELES UNIFIED	LOS ANGELES	Logan Street Elementary	61/64733-00-4143	12/15/2008	Pending	$ 10,016
LOS ANGELES UNIFIED	LOS ANGELES	Loma Vista Elementary	61/64733-00-4144	12/15/2008	Pending	$ 6,422
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Academy Middle	61/64733-00-4145	12/15/2008	Pending	$ 12,299
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Elementary	61/64733-00-4146	12/15/2008	Pending	$ 21,788
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Senior High	61/64733-00-4147	12/15/2008	Pending	$ 34,372
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts New Elementary #3	61/64733-00-4148	12/15/2008	Pending	$ 10,669
LOS ANGELES UNIFIED	LOS ANGELES	Maclay (Charles) Middle	61/64733-00-4149	12/15/2008	Pending	$ 28,564
LOS ANGELES UNIFIED	LOS ANGELES	South Gate New Elementary #6	61/64733-00-4150	12/15/2008	Pending	$ 5,041
LOS ANGELES UNIFIED	LOS ANGELES	Madison (James) Middle	61/64733-00-4151	12/15/2008	Pending	$ 11,534
LOS ANGELES UNIFIED	LOS ANGELES	Magnolia Avenue Elementary	61/64733-00-4152	12/15/2008	Pending	$ 5,036
LOS ANGELES UNIFIED	LOS ANGELES	Malabar Street Elementary	61/64733-00-4153	12/15/2008	Pending	$ 8,242
LOS ANGELES UNIFIED	LOS ANGELES	Manchester Avenue Elementary	61/64733-00-4154	12/15/2008	Pending	$ 11,166
LOS ANGELES UNIFIED	LOS ANGELES	Manhattan Place Elementary	61/64733-00-4155	12/15/2008	Pending	$ 5,678
LOS ANGELES UNIFIED	LOS ANGELES	Mann (Horace) Junior High	61/64733-00-4156	12/15/2008	Pending	$ 20,095
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts Senior High	61/64733-00-4157	12/15/2008	Pending	$ 17,263
LOS ANGELES UNIFIED	LOS ANGELES	Marina del Rey Middle	61/64733-00-4158	12/15/2008	Pending	$ 12,472
LOS ANGELES UNIFIED	LOS ANGELES	Markham (Edwin) Middle	61/64733-00-4159	12/15/2008	Pending	$ 12,965
LOS ANGELES UNIFIED	LOS ANGELES	Marshall (John) Senior High	61/64733-00-4160	12/15/2008	Pending	$ 23,458
LOS ANGELES UNIFIED	LOS ANGELES	Southeast Area New Learning Cente	61/64733-00-4161	12/15/2008	Pending	$ 13,793
LOS ANGELES UNIFIED	LOS ANGELES	Maywood New Elementary #5	61/64733-00-4162	12/15/2008	Pending	$ 5,105
LOS ANGELES UNIFIED	LOS ANGELES	Menlo Avenue Elementary	61/64733-00-4163	12/15/2008	Pending	$ 10,465
LOS ANGELES UNIFIED	LOS ANGELES	Middleton Street Elementary	61/64733-00-4164	12/15/2008	Pending	$ 12,000
LOS ANGELES UNIFIED	LOS ANGELES	Miller (Loren) Elementary	61/64733-00-4165	12/15/2008	Pending	$ 28,236
LOS ANGELES UNIFIED	LOS ANGELES	Miramonte Elementary	61/64733-00-4166	12/15/2008	Pending	$ 11,233
LOS ANGELES UNIFIED	LOS ANGELES	Monroe (James) High	61/64733-00-4167	12/15/2008	Pending	$ 24,390
LOS ANGELES UNIFIED	LOS ANGELES	Muir (John) Middle	61/64733-00-4168	12/15/2008	Pending	$ 15,851
LOS ANGELES UNIFIED	LOS ANGELES	Murchison Street Elementary	61/64733-00-4169	12/15/2008	Pending	$ 10,505
LOS ANGELES UNIFIED	LOS ANGELES	Napa Street Elementary	61/64733-00-4170	12/15/2008	Pending	$ 10,880
LOS ANGELES UNIFIED	LOS ANGELES	Narbonne (Nathaniel) Senior High	61/64733-00-4171	12/15/2008	Pending	$ 37,282
LOS ANGELES UNIFIED	LOS ANGELES	Nevin Avenue Elementary	61/64733-00-4172	12/15/2008	Pending	$ 8,057
LOS ANGELES UNIFIED	LOS ANGELES	Chester W. Nimitz Middle	61/64733-00-4173	12/15/2008	Pending	$ 7,574
LOS ANGELES UNIFIED	LOS ANGELES	Noble Avenue Elementary	61/64733-00-4174	12/15/2008	Pending	$ 17,671
LOS ANGELES UNIFIED	LOS ANGELES	Normandie Avenue Elementary	61/64733-00-4175	12/15/2008	Pending	$ 15,022
LOS ANGELES UNIFIED	LOS ANGELES	North Hollywood Senior High	61/64733-00-4176	12/15/2008	Pending	$ 15,588
LOS ANGELES UNIFIED	LOS ANGELES	Northridge Middle	61/64733-00-4177	12/15/2008	Pending	$ 11,638
LOS ANGELES UNIFIED	LOS ANGELES	Bell 3 Span	61/64733-00-4178	12/15/2008	Pending	$ 6,378
LOS ANGELES UNIFIED	LOS ANGELES	Olive Vista Middle	61/64733-00-4179	12/15/2008	Pending	$ 10,518
LOS ANGELES UNIFIED	LOS ANGELES	O'Melveny Elementary	61/64733-00-4180	12/15/2008	Pending	$ 6,384
LOS ANGELES UNIFIED	LOS ANGELES	Pacific Boulevard	61/64733-00-4181	12/15/2008	Pending	$ 23,242
LOS ANGELES UNIFIED	LOS ANGELES	Pacoima Middle	61/64733-00-4182	12/15/2008	Pending	$ 14,220
LOS ANGELES UNIFIED	LOS ANGELES	Noble New Elementary #1	61/64733-00-4183	12/15/2008	Pending	$ 6,922
LOS ANGELES UNIFIED	LOS ANGELES	Monroe New Elementary #2	61/64733-00-4184	12/15/2008	Pending	$ 7,700
LOS ANGELES UNIFIED	LOS ANGELES	Parmelee Avenue Elementary	61/64733-00-4185	12/15/2008	Pending	$ 5,064
LOS ANGELES UNIFIED	LOS ANGELES	Peary (Robert E.) Middle	61/64733-00-4186	12/15/2008	Pending	$ 10,728
LOS ANGELES UNIFIED	LOS ANGELES	Pinewood Avenue Elementary	61/64733-00-4187	12/15/2008	Pending	$ 14,433
LOS ANGELES UNIFIED	LOS ANGELES	Pio Pico Elementary	61/64733-00-4188	12/15/2008	Pending	$ 37,225
LOS ANGELES UNIFIED	LOS ANGELES	Plummer Elementary	61/64733-00-4189	12/15/2008	Pending	$ 5,503
LOS ANGELES UNIFIED	LOS ANGELES	Politi (Leo) Elementary	61/64733-00-4190	12/15/2008	Pending	$ 14,692
LOS ANGELES UNIFIED	LOS ANGELES	Francis (John H.) Polytechnic	61/64733-00-4191	12/15/2008	Pending	$ 14,632
LOS ANGELES UNIFIED	LOS ANGELES	Ranchito Avenue Elementary	61/64733-00-4192	12/15/2008	Pending	$ 6,369
LOS ANGELES UNIFIED	LOS ANGELES	Roosevelt (Theodore) Senior High	61/64733-00-4193	12/15/2008	Pending	$ 15,764
LOS ANGELES UNIFIED	LOS ANGELES	Roscoe Elementary	61/64733-00-4194	12/15/2008	Pending	$ 5,449
LOS ANGELES UNIFIED	LOS ANGELES	Rosemont Avenue Elementary	61/64733-00-4195	12/15/2008	Pending	$ 13,776
LOS ANGELES UNIFIED	LOS ANGELES	Russell Elementary	61/64733-00-4196	12/15/2008	Pending	$ 5,610
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Elementary	61/64733-00-4197	12/15/2008	Pending	$ 7,126
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Senior High	61/64733-00-4198	12/15/2008	Pending	$ 9,259
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Middle	61/64733-00-4199	12/15/2008	Pending	$ 7,372
LOS ANGELES UNIFIED	LOS ANGELES	San Miguel Elementary	61/64733-00-4200	12/15/2008	Pending	$ 7,728
LOS ANGELES UNIFIED	LOS ANGELES	San Pedro Senior High	61/64733-00-4201	12/15/2008	Pending	$ 10,043
LOS ANGELES UNIFIED	LOS ANGELES	South LA Area New High #1	61/64733-00-4202	12/15/2008	Pending	$ 13,544
LOS ANGELES UNIFIED	LOS ANGELES	Saturn Street Elementary	61/64733-00-4203	12/15/2008	Pending	$ 28,192
LOS ANGELES UNIFIED	LOS ANGELES	Selma Avenue Elementary	61/64733-00-4204	12/15/2008	Pending	$ 10,694
LOS ANGELES UNIFIED	LOS ANGELES	Sepulveda (Francisco) Middle	61/64733-00-4205	12/15/2008	Pending	$ 6,706
LOS ANGELES UNIFIED	LOS ANGELES	Sharp Avenue Elementary	61/64733-00-4206	12/15/2008	Pending	$ 11,252
LOS ANGELES UNIFIED	LOS ANGELES	Sheridan Street Elementary	61/64733-00-4207	12/15/2008	Pending	$ 8,738

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Projected SAB Date/Status	Estimated State Grant
LOS ANGELES UNIFIED	LOS ANGELES	Sierra Park Elementary	61/64733-00-4208	12/15/2008	Pending	$ 5,409
LOS ANGELES UNIFIED	LOS ANGELES	Soto Street Elementary	61/64733-00-4209	12/15/2008	Pending	$ 6,361
LOS ANGELES UNIFIED	LOS ANGELES	South East High	61/64733-00-4210	12/15/2008	Pending	$ 14,937
LOS ANGELES UNIFIED	LOS ANGELES	South Gate Senior High	61/64733-00-4211	12/15/2008	Pending	$ 14,969
LOS ANGELES UNIFIED	LOS ANGELES	South Gate Middle	61/64733-00-4212	12/15/2008	Pending	$ 5,064
LOS ANGELES UNIFIED	LOS ANGELES	South Park Elementary	61/64733-00-4213	12/15/2008	Pending	$ 9,608
LOS ANGELES UNIFIED	LOS ANGELES	State Street Elementary	61/64733-00-4214	12/15/2008	Pending	$ 6,093
LOS ANGELES UNIFIED	LOS ANGELES	Stevenson (Robert Louis) Middle	61/64733-00-4215	12/15/2008	Pending	$ 6,289
LOS ANGELES UNIFIED	LOS ANGELES	Stoner Avenue Elementary	61/64733-00-4216	12/15/2008	Pending	$ 7,857
LOS ANGELES UNIFIED	LOS ANGELES	Sun Valley Middle	61/64733-00-4217	12/15/2008	Pending	$ 15,315
LOS ANGELES UNIFIED	LOS ANGELES	Sunrise Elementary	61/64733-00-4218	12/15/2008	Pending	$ 7,227
LOS ANGELES UNIFIED	LOS ANGELES	Sylmar Senior High	61/64733-00-4219	12/15/2008	Pending	$ 20,567
LOS ANGELES UNIFIED	LOS ANGELES	Sylvan Park Elementary	61/64733-00-4220	12/15/2008	Pending	$ 6,782
LOS ANGELES UNIFIED	LOS ANGELES	Trinity Street Elementary	61/64733-00-4221	12/15/2008	Pending	$ 5,448
LOS ANGELES UNIFIED	LOS ANGELES	Mark Twain Middle	61/64733-00-4222	12/15/2008	Pending	$ 5,078
LOS ANGELES UNIFIED	LOS ANGELES	Tweedy Elementary	61/64733-00-4223	12/15/2008	Pending	$ 5,237
LOS ANGELES UNIFIED	LOS ANGELES	Union Avenue Elementary	61/64733-00-4224	12/15/2008	Pending	$ 7,803
LOS ANGELES UNIFIED	LOS ANGELES	University Senior High	61/64733-00-4225	12/15/2008	Pending	$ 19,273
LOS ANGELES UNIFIED	LOS ANGELES	Utah Street Elementary	61/64733-00-4226	12/15/2008	Pending	$ 8,410
LOS ANGELES UNIFIED	LOS ANGELES	Van Nuys Senior High	61/64733-00-4227	12/15/2008	Pending	$ 14,026
LOS ANGELES UNIFIED	LOS ANGELES	Van Nuys Middle	61/64733-00-4228	12/15/2008	Pending	$ 12,660
LOS ANGELES UNIFIED	LOS ANGELES	Vermont Avenue Elementary	61/64733-00-4229	12/15/2008	Pending	$ 5,103
LOS ANGELES UNIFIED	LOS ANGELES	Vernon City Elementary	61/64733-00-4230	12/15/2008	Pending	$ 5,106
LOS ANGELES UNIFIED	LOS ANGELES	Virgil Middle	61/64733-00-4231	12/15/2008	Pending	$ 11,559
LOS ANGELES UNIFIED	LOS ANGELES	Virginia Road Elementary	61/64733-00-4232	12/15/2008	Pending	$ 10,223
LOS ANGELES UNIFIED	LOS ANGELES	East Valley Area New Middle School	61/64733-00-4233	12/15/2008	Pending	$ 12,028
LOS ANGELES UNIFIED	LOS ANGELES	Walnut Park Elementary	61/64733-00-4234	12/15/2008	Pending	$ 5,739
LOS ANGELES UNIFIED	LOS ANGELES	Washington (George) Preparatory H	61/64733-00-4235	12/15/2008	Pending	$ 53,986
LOS ANGELES UNIFIED	LOS ANGELES	Webster (Daniel) Middle	61/64733-00-4236	12/15/2008	Pending	$ 21,374
LOS ANGELES UNIFIED	LOS ANGELES	Weemes (Lenicia B.) Elementary	61/64733-00-4237	12/15/2008	Pending	$ 5,307
LOS ANGELES UNIFIED	LOS ANGELES	West Vernon Avenue Elementary	61/64733-00-4238	12/15/2008	Pending	$ 6,055
LOS ANGELES UNIFIED	LOS ANGELES	Westchester Senior High	61/64733-00-4239	12/15/2008	Pending	$ 21,646
LOS ANGELES UNIFIED	LOS ANGELES	Western Avenue Elementary	61/64733-00-4240	12/15/2008	Pending	$ 9,760
LOS ANGELES UNIFIED	LOS ANGELES	White (Charles) Elementary	61/64733-00-4241	12/15/2008	Pending	$ 8,445
LOS ANGELES UNIFIED	LOS ANGELES	Wilmington Middle	61/64733-00-4242	12/15/2008	Pending	$ 6,981
LOS ANGELES UNIFIED	LOS ANGELES	Wilshire Crest Elementary	61/64733-00-4243	12/15/2008	Pending	$ 6,961
LOS ANGELES UNIFIED	LOS ANGELES	Wilson (Woodrow) Senior High	61/64733-00-4244	12/15/2008	Pending	$ 20,232
LOS ANGELES UNIFIED	LOS ANGELES	Woodcrest Elementary	61/64733-00-4245	12/15/2008	Pending	$ 6,523
LOS ANGELES UNIFIED	LOS ANGELES	Woodlawn Avenue Elementary	61/64733-00-4246	12/15/2008	Pending	$ 4,368
BALDWIN PARK UNIFIED	LOS ANGELES	Baldwin Park High	61/64287-00-0001	12/16/2008	Pending	$ 575,955
BALDWIN PARK UNIFIED	LOS ANGELES	Baldwin Park High	61/64287-00-0002	12/16/2008	Pending	$ 562,655
BALDWIN PARK UNIFIED	LOS ANGELES	Baldwin Park High	61/64287-00-0003	12/16/2008	Pending	$ 17,724
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	La Puente High	61/73445-00-0019	12/22/2008	Pending	$ 53,595
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	La Puente High	61/73445-00-0020	12/22/2008	Pending	$ 46,920
HUENEME ELEMENTARY	VENTURA	Haycox (Art) Elementary	61/72462-00-0008	12/22/2008	Pending	$ 551,785
CHULA VISTA ELEMENTARY	SAN DIEGO	Montgomery (John J.) Elementary	61/68023-00-0020	12/23/2008	Pending	$ 70,151
KINGS CANYON JOINT UNIFIED	FRESNO	Jefferson Elementary	61/62265-00-0035	12/23/2008	Pending	$ 41,256
SAN DIEGO UNIFIED	SAN DIEGO	Encanto Elementary	61/68338-00-0313	12/23/2008	Pending	$ 16,632
TOTAL FUNDING PENDING						**$ 494,936,220**

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
HACIENDA LA PUENTE	LOS ANGELES	La Puente High	NA	1/8/2009	Received	$ 226,280
SOUTH BAY UNION	HUMBOLDT	South Bay Elementary	61/63032-00-0004	1/8/2009	Received	$ 11,805
SOUTH BAY UNION	HUMBOLDT	South Bay Elementary	61/63032-00-0005	1/9/2009	Received	$ 12,271
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens Elementary	NA	1/12/2009	Received	$ 14,700
MONTEBELLO UNIFIED	LOS ANGELES	Joseph Gascon Elementary	NA	1/12/2009	Received	$ 5,056
MONTEBELLO UNIFIED	LOS ANGELES	La Merced Elementary	NA	1/12/2009	Received	$ 4,986
MONTEBELLO UNIFIED	LOS ANGELES	La Merced Intermediate	NA	1/12/2009	Received	$ 24,082
MONTEBELLO UNIFIED	LOS ANGELES	La Merced Intermediate	NA	1/12/2009	Received	$ 13,137
MONTEBELLO UNIFIED	LOS ANGELES	Laguna Nueva Elementary	NA	1/12/2009	Received	$ 3,901
MONTEBELLO UNIFIED	LOS ANGELES	Wilcox Elementary	NA	1/12/2009	Received	$ 3,748
LINDSAY UNIFIED	TULARE	Lindsay High	61/71993-00-0049	1/15/2009	Received	$ 6,677
SAN DIEGO UNIFIED	SAN DIEGO	Gompers Secondary	NA	1/16/2009	Received	$ 112,719
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	NA	1/20/2009	Received	$ 65,747
MONTEBELLO UNIFIED	LOS ANGELES	Rosewood Park Elementary	NA	1/20/2009	Received	$ 9,775
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	NA	1/20/2009	Received	$ 16,942
REEF-SUNSET UNIFIED	KINGS	Avenal High	NA	1/20/2009	Received	$ 45,464
REEF-SUNSET UNIFIED	KINGS	Kettleman City Elementary	NA	1/20/2009	Received	$ 10,772
KEYES UNION	STANISLAUS	Keyes Elementary	NA	1/21/2009	Received	$ 789,320
COLTON JOINT UNIFIED	SAN BERNARDINO	Abraham Lincoln Elementary	NA	1/26/2009	Received	$ 156,591
COLTON JOINT UNIFIED	SAN BERNARDINO	Bloomington Middle	NA	1/26/2009	Received	$ 43,242
COLTON JOINT UNIFIED	SAN BERNARDINO	Colton High	NA	1/26/2009	Received	$ 163,572
COLTON JOINT UNIFIED	SAN BERNARDINO	Crestmore Elementary	NA	1/26/2009	Received	$ 30,669
COLTON JOINT UNIFIED	SAN BERNARDINO	Slover Mountain High	NA	1/26/2009	Received	$ 16,583
CERES UNIFIED	STANISLAUS	Caswell Elementary	NA	1/28/2009	Received	$ 543,211
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley	NA	1/28/2009	Received	$ 84,764
CUTLER-OROSI JOINT UNIFIED	TULARE	Golden Valley	NA	1/28/2009	Received	$ 5,189
MONTEBELLO UNIFIED	LOS ANGELES	La Merced Elementary	NA	1/28/2009	Received	$ 68,864
COMPTON UNIFIED	LOS ANGELES	Anderson Elementary	61/73437-00-0006	1/30/2009	Received	$ 2
COMPTON UNIFIED	LOS ANGELES	Bunche Middle	61/73437-00-0007	1/30/2009	Received	$ 7
COMPTON UNIFIED	LOS ANGELES	Bursch Elementary	61/73437-00-0009	1/30/2009	Received	$ 3
COMPTON UNIFIED	LOS ANGELES	Caldwell Elementary	61/73437-00-0008	1/30/2009	Received	$ 3
COMPTON UNIFIED	LOS ANGELES	Carver Elementary	61/73437-00-0019	1/30/2009	Received	$ 4
COMPTON UNIFIED	LOS ANGELES	Mayo Elementary	61/73437-00-0012	1/30/2009	Received	$ 230
COMPTON UNIFIED	LOS ANGELES	McNair Elementary	61/73437-00-0014	1/30/2009	Received	$ 2,100
REDWOOD CITY	SAN MATEO	Garfield Charter Elementary	NA	1/30/2009	Received	$ 20,912
WHITTIER CITY	LOS ANGELES	West Whittier	NA	1/30/2009	Received	$ 6,267
COLTON JOINT UNIFIED	SAN BERNARDINO	Bloomington Middle	NA	2/2/2009	Received	$ 21,520
COLTON JOINT UNIFIED	SAN BERNARDINO	Bloomington Middle	NA	2/2/2009	Received	$ 83,040
COLTON JOINT UNIFIED	SAN BERNARDINO	Bloomington Middle	NA	2/2/2009	Received	$ 86,525
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens High	NA	2/2/2009	Received	$ 6,302
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	NA	2/2/2009	Received	$ 6,302
SAN DIEGO UNIFIED	SAN DIEGO	Morse Senior High	NA	2/2/2009	Received	$ 70,541
COALINGA-HURON UNIFIED	FRESNO	Dawson Elementary	NA	2/5/2009	Received	$ 24,135
LODI UNIFIED	SAN JOAQUIN	Clairmont Elementary	61/68585-00-0066	2/5/2009	Received	$ 2,153
CHULA VISTA ELEMENTARY	SAN DIEGO	Lilian J.Rice Elementary	NA	2/9/2009	Received	$ 747,911
COLTON JOINT UNIFIED	SAN BERNARDINO	Crestmore Elementary	NA	2/9/2009	Received	$ 28,500
COLTON JOINT UNIFIED	SAN BERNARDINO	Mary B. Lewis Elementary	NA	2/9/2009	Received	$ 34,000
COLTON JOINT UNIFIED	SAN BERNARDINO	Mary B. Lewis Elementary	NA	2/9/2009	Received	$ 50,000
COLTON JOINT UNIFIED	SAN BERNARDINO	William McKinley Elementary	NA	2/9/2009	Received	$ 64,000
LODI UNIFIED	SAN JOAQUIN	Beckman Elementary	NA	2/9/2009	Received	$ 777,386
LODI UNIFIED	SAN JOAQUIN	Delta Sierra Middle	NA	2/9/2009	Received	$ 1,884,452
LODI UNIFIED	SAN JOAQUIN	Heritage Elementary	NA	2/9/2009	Received	$ 797,244
LODI UNIFIED	SAN JOAQUIN	Oakwood Elementary	NA	2/9/2009	Received	$ 935,663
LODI UNIFIED	SAN JOAQUIN	Parklane Elementary	NA	2/9/2009	Received	$ 461,269
LODI UNIFIED	SAN JOAQUIN	Sutherland Elementary	NA	2/9/2009	Received	$ 28,321
LODI UNIFIED	SAN JOAQUIN	Wagner Holt Elementary	NA	2/9/2009	Received	$ 763,084
OCEANSIDE UNIFIED	SAN DIEGO	Libby Elementary	NA	2/10/2009	Received	$ 80,232
LODI UNIFIED	SAN JOAQUIN	Creekside Elementary	NA	2/11/2009	Received	$ 1,145,209
LODI UNIFIED	SAN JOAQUIN	Live Oak Elementary	NA	2/11/2009	Received	$ 202,213
LODI UNIFIED	SAN JOAQUIN	Nichols Elementary	NA	2/11/2009	Received	$ 272,220
LODI UNIFIED	SAN JOAQUIN	Washington Elementary	NA	2/11/2009	Received	$ 795,069
LODI UNIFIED	SAN JOAQUIN	Westwood Elementary	NA	2/11/2009	Received	$ 1,582,495
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	NA	2/11/2009	Received	$ 80,578
REEF-SUNSET UNIFIED	KINGS	Avenal Elementary	NA	2/11/2009	Received	$ 238,695
HACIENDA LA PUENTE	LOS ANGELES	Glenelder Elementary	NA	2/13/2009	Received	$ 78,327
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	2/13/2009	Received	$ 74,929
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	2/13/2009	Received	$ 334,496
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	2/13/2009	Received	$ 227,668
HACIENDA LA PUENTE	LOS ANGELES	La Puente High	NA	2/13/2009	Received	$ 226,234
HACIENDA LA PUENTE	LOS ANGELES	La Puente High	NA	2/13/2009	Received	$ 13,170
HACIENDA LA PUENTE	LOS ANGELES	La Puente High	NA	2/13/2009	Received	$ 3,949,787
HACIENDA LA PUENTE	LOS ANGELES	La Puente High	NA	2/13/2009	Received	$ 641,202
HACIENDA LA PUENTE	LOS ANGELES	Sierra Vista Middle	NA	2/13/2009	Received	$ 59,918
HACIENDA LA PUENTE	LOS ANGELES	Sierra Vista Middle	NA	2/13/2009	Received	$ 6,911
HACIENDA LA PUENTE	LOS ANGELES	Sierra Vista Middle	NA	2/13/2009	Received	$ 215,098
HACIENDA LA PUENTE	LOS ANGELES	Sparks Elementary	NA	2/13/2009	Received	$ 38,519
HACIENDA LA PUENTE	LOS ANGELES	Sparks Elementary	NA	2/13/2009	Received	$ 13,166
HACIENDA LA PUENTE	LOS ANGELES	Valinda School of Academics	NA	2/13/2009	Received	$ 26,058

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
HACIENDA LA PUENTE	LOS ANGELES	Valinda School of Academics	NA	2/13/2009	Received	$ 287,925
HACIENDA LA PUENTE	LOS ANGELES	Valinda School of Academics	NA	2/13/2009	Received	$ 9,786
HACIENDA LA PUENTE	LOS ANGELES	William Workman High	NA	2/13/2009	Received	$ 64,636
HACIENDA LA PUENTE	LOS ANGELES	William Workman High	NA	2/13/2009	Received	$ 10,353
HACIENDA LA PUENTE	LOS ANGELES	Wing Lane Elementary	NA	2/13/2009	Received	$ 43,751
HACIENDA LA PUENTE	LOS ANGELES	Wing Lane Elementary	NA	2/13/2009	Received	$ 83,831
GERBER UNION ELEMENTARY	TEHAMA	Gerber Elementary	NA	2/18/2009	Received	$ 212,977
GERBER UNION ELEMENTARY	TEHAMA	Gerber Elementary	NA	2/18/2009	Received	$ 26,901
PASADENA UNIFIED	LOS ANGELES	Madison Elementary	61/64881-00-0004	2/23/2009	Received	$ 47,387
PASADENA UNIFIED	LOS ANGELES	Muir High	NA	2/23/2009	Received	$ 1,794,090
PASADENA UNIFIED	LOS ANGELES	Muir High	NA	2/23/2009	Received	$ 207,300
PASADENA UNIFIED	LOS ANGELES	Pasadena High	61/64881-00-0017	2/23/2009	Received	$ 65,962
STANISLAUS UNION	STANISLAUS	Chrysler Elementary	NA	2/24/2009	Received	$ 173,684
STANISLAUS UNION	STANISLAUS	Chrysler Elementary	NA	2/24/2009	Received	$ 110,877
STANISLAUS UNION	STANISLAUS	Eisenhut Elementary	NA	2/24/2009	Received	$ 135,698
STANISLAUS UNION	STANISLAUS	Eisenhut Elementary	NA	2/24/2009	Received	$ 266,270
STANISLAUS UNION	STANISLAUS	Muncy Elementary	NA	2/24/2009	Received	$ 214,556
STANISLAUS UNION	STANISLAUS	Muncy Elementary	NA	2/24/2009	Received	$ 197,361
STANISLAUS UNION	STANISLAUS	Muncy Elementary	NA	2/24/2009	Received	$ 169,441
COMPTON UNIFIED	LOS ANGELES	Compton High	61/73437-00-0043	2/26/2009	Received	$ 52,304
COMPTON UNIFIED	LOS ANGELES	Davis Middle	61/73437-00-0015	2/26/2009	Received	$ 430
COMPTON UNIFIED	LOS ANGELES	Dickison Elementary	61/73437-00-0041	2/26/2009	Received	$ 3,287
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0037	2/26/2009	Received	$ 431
COMPTON UNIFIED	LOS ANGELES	Emerson Elementary	61/73437-00-0034	2/26/2009	Received	$ 428
COMPTON UNIFIED	LOS ANGELES	Enterprise Middle	61/73437-00-0031	2/26/2009	Received	$ 48,037
COMPTON UNIFIED	LOS ANGELES	Enterprise Middle	61/73437-00-0032	2/26/2009	Received	$ 428
COMPTON UNIFIED	LOS ANGELES	Foster Elementary	61/73437-00-0030	2/26/2009	Received	$ 13
COMPTON UNIFIED	LOS ANGELES	Jefferson Elementary	61/73437-00-0029	2/26/2009	Received	$ 92,992
COMPTON UNIFIED	LOS ANGELES	Kennedy (Robert F.) Elementary	61/73437-00-0026	2/26/2009	Received	$ 34,842
COMPTON UNIFIED	LOS ANGELES	King (Martin Luther) Elementary	61/73437-00-0024	2/26/2009	Received	$ 2
COMPTON UNIFIED	LOS ANGELES	Bursch Elementary	61/73437-00-0021	2/26/2009	Received	$ 49,335
COMPTON UNIFIED	LOS ANGELES	Caldwell Street Elementary	61/73437-00-0020	2/26/2009	Received	$ 433
COMPTON UNIFIED	LOS ANGELES	Carver Elementary	61/73437-00-0010	2/26/2009	Received	$ 1,755
COMPTON UNIFIED	LOS ANGELES	Davis Middle	61/73437-00-0016	2/26/2009	Received	$ 35,271
COMPTON UNIFIED	LOS ANGELES	McNair Elementary	61/73437-00-0013	2/26/2009	Received	$ 430
FARMERSVILLE UNIFIED	TULARE	J.E. Hester Elementary	61/75325-00-0001	2/26/2009	Received	$ 76,392
CORNING UNION ELEMENTARY	TEHAMA	Olive View Elementary	61/71498-00-0006	2/27/2009	Received	$ 79,809
GUADALUPE UNION	SANTA BARBARA	McKenzie Junior High	61/69203-00-0002	2/27/2009	Received	$ 1,695
SACRAMENTO CITY UNIFIED	SACRAMENTO	Nicholas Elementary	61/67439-00-0085	2/27/2009	Received	$ 9,614
MONTEBELLO UNIFIED	LOS ANGELES	Eastmont Intermediate	NA	3/2/2009	Received	$ 42,373
STANISLAUS UNION	STANISLAUS	Eisenhut Elementary	NA	3/4/2009	Received	$ 7,667
HACIENDA LA PUENTE	LOS ANGELES	Glenelder Elementary	NA	3/9/2009	Received	$ 152,103
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	3/9/2009	Received	$ 1,373,091
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	3/9/2009	Received	$ 527,252
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	3/9/2009	Received	$ 335,231
HACIENDA LA PUENTE	LOS ANGELES	Grandview Middle	NA	3/9/2009	Received	$ 270,337
HACIENDA LA PUENTE	LOS ANGELES	Sierra Vista Middle	NA	3/9/2009	Received	$ 119,592
HACIENDA LA PUENTE	LOS ANGELES	Sierra Vista Middle	NA	3/9/2009	Received	$ 98,104
HACIENDA LA PUENTE	LOS ANGELES	Sparks Elementary	NA	3/9/2009	Received	$ 241,985
HACIENDA LA PUENTE	LOS ANGELES	Valinda School of Academics	NA	3/9/2009	Received	$ 258,703
HACIENDA LA PUENTE	LOS ANGELES	William Workman High	NA	3/9/2009	Received	$ 345,249
HACIENDA LA PUENTE	LOS ANGELES	William Workman High	NA	3/9/2009	Received	$ 507,152
HACIENDA LA PUENTE	LOS ANGELES	Wing Lane Elementary	NA	3/9/2009	Received	$ 206,070
SANTA PAULA ELEMENTARY	VENTURA	Barbara Webster Elementary	NA	3/9/2009	Received	$ 22,072
SANTA PAULA ELEMENTARY	VENTURA	Glen City Elementary	NA	3/12/2009	Received	$ 6,931
KONOCTI UNIFIED	LAKE	Lower Lake High	61/64022-00-0063	3/13/2009	Received	$ 145,507
GERBER UNION ELEMENTARY	TEHAMA	Gerber Elementary	NA	3/16/2009	Received	$ 93,643
COMPTON UNIFIED	LOS ANGELES	Compton High	61/73437-00-0042	3/23/2009	Received	$ 16
COMPTON UNIFIED	LOS ANGELES	Dickison Elementary	61/73437-00-0039	3/23/2009	Received	$ 281
COMPTON UNIFIED	LOS ANGELES	Dickison Elementary	61/73437-00-0040	3/23/2009	Received	$ 906
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0035	3/23/2009	Received	$ 15,371
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0036	3/23/2009	Received	$ 101
COMPTON UNIFIED	LOS ANGELES	Dominguez High	61/73437-00-0038	3/23/2009	Received	$ 3,690
COMPTON UNIFIED	LOS ANGELES	Emerson Elementary	61/73437-00-0033	3/23/2009	Received	$ 1,977
COMPTON UNIFIED	LOS ANGELES	Kelly Elementary	61/73437-00-0027	3/23/2009	Received	$ 9
COMPTON UNIFIED	LOS ANGELES	Kelly Elementary	61/73437-00-0028	3/23/2009	Received	$ 5,007
EL MONTE UNION HIGH	LOS ANGELES	El Monte High	61/64519-00-0006	3/23/2009	Received	$ 6,501
EL MONTE UNION HIGH	LOS ANGELES	Mountain View High	61/64519-00-0007	3/23/2009	Received	$ 6,500
PASADENA UNIFIED	LOS ANGELES	Cleveland Elementary	61/64881-00-0005	3/23/2009	Received	$ 44,439
PASADENA UNIFIED	LOS ANGELES	Pasadena High	61/64881-00-0014	3/23/2009	Received	$ 783
FONTANA UNIFIED	SAN BERNARDINO	A.B. Miller High	NA	4/2/2009	Received	$ 1,681,000
FONTANA UNIFIED	SAN BERNARDINO	A.B. Miller High	NA	4/2/2009	Received	$ 345,769
FONTANA UNIFIED	SAN BERNARDINO	Fontana High	NA	4/2/2009	Received	$ 1,655,452
FONTANA UNIFIED	SAN BERNARDINO	Fontana High	NA	4/2/2009	Received	$ 174,051
FONTANA UNIFIED	SAN BERNARDINO	Henry J. Kaiser High	NA	4/2/2009	Received	$ 24,665
FONTANA UNIFIED	SAN BERNARDINO	Oleander Elementary	NA	4/2/2009	Received	$ 623,041
FONTANA UNIFIED	SAN BERNARDINO	Oleander Elementary	NA	4/2/2009	Received	$ 70,862
FONTANA UNIFIED	SAN BERNARDINO	Palmetto Elementary	NA	4/2/2009	Received	$ 250,057

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
FONTANA UNIFIED	SAN BERNARDINO	Palmetto Elementary	NA	4/2/2009	Received	$ 872,586
FONTANA UNIFIED	SAN BERNARDINO	Palmetto Elementary	NA	4/2/2009	Received	$ 274,893
FONTANA UNIFIED	SAN BERNARDINO	Sequoia Middle	NA	4/2/2009	Received	$ 1,169,715
FONTANA UNIFIED	SAN BERNARDINO	Sequoia Middle	NA	4/2/2009	Received	$ 280,472
FONTANA UNIFIED	SAN BERNARDINO	South Tamarind Elementary	NA	4/2/2009	Received	$ 94,690
LOST HILLS UNION ELEMENTARY	KERN	A.M. Thomas Middle	NA	4/2/2009	Received	$ 348,791
LOST HILLS UNION ELEMENTARY	KERN	Lost Hills Elementary	NA	4/2/2009	Received	$ 556,245
LOST HILLS UNION ELEMENTARY	KERN	Lost Hills Elementary	NA	4/2/2009	Received	$ 41,527
LOST HILLS UNION ELEMENTARY	KERN		NA	4/2/2009	Received	$ 48,495
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens High	NA	4/3/2009	Received	$ 2,937
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	NA	4/3/2009	Received	$ 2,937
PAJARO VALLEY UNIFIED	SANTA CRUZ	Alianza Charter	61/69799-00-0002	4/9/2009	Received	$ 120,822
HEMET UNIFIED	RIVERSIDE	Hamilton Elementary	NA	4/10/2009	Received	$ 298,928
HEMET UNIFIED	RIVERSIDE	Helen Hunt Jackson High	NA	4/10/2009	Received	$ 2,090
HEMET UNIFIED	RIVERSIDE	Hemet Elementary	NA	4/10/2009	Received	$ 308,653
HEMET UNIFIED	RIVERSIDE	Ramona Elementary	NA	4/10/2009	Received	$ 109,879
HEMET UNIFIED	RIVERSIDE	Ramona Elementary	NA	4/10/2009	Received	$ 670,397
HEMET UNIFIED	RIVERSIDE	Winchester Elementary	NA	4/10/2009	Received	$ 278,240
HEMET UNIFIED	RIVERSIDE	Winchester Elementary	NA	4/10/2009	Received	$ 443,992
PAJARO VALLEY UNIFIED	SANTA CRUZ	Rolling Hills Middle	NA	4/10/2009	Received	$ 10,854
PAJARO VALLEY UNIFIED	SANTA CRUZ	Rolling Hills Middle	NA	4/10/2009	Received	$ 6,010
PAJARO VALLEY UNIFIED	SANTA CRUZ	Watsonville High	NA	4/10/2009	Received	$ 22,548
KONOCTI UNIFIED	LAKE	Burns Valley Elementary	61/64022-00-0069	4/15/2009	Received	$ 24
KONOCTI UNIFIED	LAKE	Burns Valley Elementary	61/64022-00-0075	4/15/2009	Received	$ 5,844
KONOCTI UNIFIED	LAKE	East Lake Elementary	61/64022-00-0062	4/15/2009	Received	$ 1,657
KONOCTI UNIFIED	LAKE	Lower Lake High	61/64022-00-0061	4/15/2009	Received	$ 192
KONOCTI UNIFIED	LAKE	Pomo Elementary	61/64022-00-0065	4/15/2009	Received	$ 2
HUENEME ELEMENTARY	VENTURA	Art Haycox Elementary	NA	4/17/2009	Received	$ 28,962
HUENEME ELEMENTARY	VENTURA	Julien Hathaway Elementary	NA	4/17/2009	Received	$ 29,285
HUENEME ELEMENTARY	VENTURA	Larsen Elementary	NA	4/17/2009	Received	$ 17,393
HUENEME ELEMENTARY	VENTURA	Sunkist Elementary	NA	4/17/2009	Received	$ 26,645
WASCO UNION ELEMENTARY	KERN	Karl F. Clemens Elementary	NA	4/17/2009	Received	$ 386,106
WASCO UNION ELEMENTARY	KERN	Palm Avenue Elementary	NA	4/17/2009	Received	$ 80,004
WASCO UNION ELEMENTARY	KERN	Thomas Jefferson Middle	NA	4/17/2009	Received	$ 717,800
WASCO UNION ELEMENTARY	KERN	Thomas Jefferson Middle	NA	4/17/2009	Received	$ 250,607
MERCED CITY ELEMENTARY	MERCED	Donn. Chenoweth Elementary	61/65771-00-0002	4/21/2009	Received	$ 4,256
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0012	4/22/2009	Received	$ 5,420
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0017	4/22/2009	Received	$ 2,025
SANTA ANA UNIFIED	ORANGE	Carr Intermediate	61/66670-00-0011	4/23/2009	Received	$ 77,477
SANTA ANA UNIFIED	ORANGE	Carr Intermediate	61/66670-00-0012	4/23/2009	Received	$ 51,940
FIREBAUGH LAS-DELTAS UNIFIED	FRESNO	Firebaugh High	61/73809-00-0008	4/24/2009	Received	$ 19,914
LOS ANGELES UNIFIED	LOS ANGELES	Aragon Elementary	NA	4/28/2009	Received	$ 505,980
LOS ANGELES UNIFIED	LOS ANGELES	McKinley Elementary	NA	4/28/2009	Received	$ 78,120
LOS ANGELES UNIFIED	LOS ANGELES	Miles Elementary	NA	4/28/2009	Received	$ 894,259
LOS ANGELES UNIFIED	LOS ANGELES	Russell Elementary	NA	4/28/2009	Received	$ 54,914
LOS ANGELES UNIFIED	LOS ANGELES	Woodlawn Elementary	NA	4/28/2009	Received	$ 86,798
WEAVER UNION ELEMENTARY	MERCED	Weaver Middle	61/65862-00-0001	5/5/2009	Received	$ 84,014
WHITTIER CITY	LOS ANGELES	West Whittier	NA	5/8/2009	Received	$ 7,853
KINGS CANYON UNIFIED	FRESNO	Washington Elementary	NA	5/14/2009	Received	$ 6,434
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0008	5/18/2009	Received	$ 1,230
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	NA	5/18/2009	Received	$ 3,409
MONTEBELLO UNIFIED	LOS ANGELES	Montebello High	NA	5/18/2009	Received	$ 17,850
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	61/71860-00-0097	5/21/2009	Received	$ 27,735
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	5/22/2009	Received	$ 133,464
VICTOR ELEMENTARY	SAN BERNARDINO	Challenger Elementary	NA	5/22/2009	Received	$ 16,084
VICTOR ELEMENTARY	SAN BERNARDINO	Del Rey Elementary	NA	5/22/2009	Received	$ 271,161
VICTOR ELEMENTARY	SAN BERNARDINO	Green Tree East Elementary	NA	5/22/2009	Received	$ 27,119
VICTOR ELEMENTARY	SAN BERNARDINO	Irwin Elementary	NA	5/22/2009	Received	$ 89,780
VICTOR ELEMENTARY	SAN BERNARDINO	Puesta del Sol Elementary	NA	5/22/2009	Received	$ 24,009
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0011	5/27/2009	Received	$ 16,473
LODI UNIFIED	SAN JOAQUIN	Lodi Middle	61/68585-00-0044	5/27/2009	Received	$ 5,633
LODI UNIFIED	SAN JOAQUIN	Lodi Middle	61/68585-00-0053	5/27/2009	Received	$ 4,667
LODI UNIFIED	SAN JOAQUIN	Morada Middle	61/68585-00-0047	5/27/2009	Received	$ 557,232
LODI UNIFIED	SAN JOAQUIN	Morada Middle	61/68585-00-0051	5/27/2009	Received	$ 23,505
RIVERDALE JOINT UNIFIED	FRESNO	Riverdale Elementary	61/75408-00-0003	5/27/2009	Received	$ 685
RIVERDALE JOINT UNIFIED	FRESNO	Riverdale Elementary	61/75408-00-0004	5/27/2009	Received	$ 715
COMPTON UNIFIED	LOS ANGELES	Bursch Elementary	61/73437-00-0044	5/28/2009	Received	$ 33
COMPTON UNIFIED	LOS ANGELES	Bursch Elementary	61/73437-00-0045	5/28/2009	Received	$ 2
COMPTON UNIFIED	LOS ANGELES	Bursch Elementary	61/73437-00-0046	5/28/2009	Received	$ 54,138
COMPTON UNIFIED	LOS ANGELES	Bursch Elementary	61/73437-00-0047	5/28/2009	Received	$ 4,998
OAKLAND UNIFIED	ALAMEDA	McClymonds High	61/61259-00-0029	5/28/2009	Received	$ 188
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Sunset Elementary	61/73445-00-0008	5/29/2009	Received	$ 271,251
CARUTHERS UNIFIED	FRESNO	Caruthers High	61/75598-00-0009	6/3/2009	Received	$ 22,499
CARUTHERS UNIFIED	FRESNO	Caruthers High	61/75598-00-0013	6/3/2009	Received	$ 3,054
PALO VERDE UNIFIED	RIVERSIDE	Palo Verde Valley High	61/67181-00-0007	6/8/2009	Received	$ 271,027
SANTA ANA UNIFIED	ORANGE	Saddleback High	61/66670-00-0002	6/12/2009	Received	$ 182,939
OXNARD ELEMENTARY	VENTURA	Frank Intermediate	NA	6/15/2009	Received	$ 169,372
OXNARD ELEMENTARY	VENTURA	Frank Intermediate	NA	6/15/2009	Received	$ 68,901

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
ALISAL UNION	MONTEREY	Chavez Elementary	61/65961-00-0001	6/16/2009	Received	$ 3,152,578
ALISAL UNION	MONTEREY	Creekside Elementary	61/65961-00-0003	6/16/2009	Received	$ 3,524,289
ALISAL UNION	MONTEREY	Loya Elementary	61/65961-00-0002	6/16/2009	Received	$ 3,014,842
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Arbuckle (Clyde) Elementary	NA	6/22/2009	Received	$ 8,311
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Chavez Elementary	NA	6/22/2009	Received	$ 23,674
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Cureton (Horace) Elementary	NA	6/22/2009	Received	$ 14,527
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Dorsa Elementary	NA	6/22/2009	Received	$ 13,121
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Fischer (Clyde L.) Middle	NA	6/22/2009	Received	$ 10,489
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	George (Joseph) Middle	NA	6/22/2009	Received	$ 29,454
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Gross (Mildred) Elementary	NA	6/22/2009	Received	$ 9,219
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Hubbard (O.S.) Elementary	NA	6/22/2009	Received	$ 3,946
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Meyer (Donald J.) Elementary	NA	6/22/2009	Received	$ 5,917
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Ocala Middle	NA	6/22/2009	Received	$ 18,597
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Pala Middle	NA	6/22/2009	Received	$ 15,558
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Rogers (William R.) Elementary	NA	6/22/2009	Received	$ 2,891
ALUM ROCK UNION ELEMENTARY	SANTA CLARA	Slonaker (Harry) Elementary	NA	6/22/2009	Received	$ 6,563
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 1,496
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 7,298
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 16,406
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 1,505
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 3,907
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 562
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 7,057
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/22/2009	Received	$ 4,690
LOS ANGELES UNIFIED	LOS ANGELES	Eastman Elementary	NA	6/22/2009	Received	$ 94,013
LOS ANGELES UNIFIED	LOS ANGELES	Garfield Senior High	NA	6/22/2009	Received	$ 67,435
LOS ANGELES UNIFIED	LOS ANGELES	Hazeltine Elementary	NA	6/22/2009	Received	$ 134,749
LOS ANGELES UNIFIED	LOS ANGELES	Holmes Elementary	NA	6/22/2009	Received	$ 238,539
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Elementary	NA	6/22/2009	Received	$ 137,169
LOS ANGELES UNIFIED	LOS ANGELES	Lorena Elementary	NA	6/22/2009	Received	$ 195,518
LOS ANGELES UNIFIED	LOS ANGELES	Miramonte Elementary	NA	6/22/2009	Received	$ 210,127
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Elementary	NA	6/22/2009	Received	$ 443,094
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/23/2009	Received	$ 2,459
FONTANA UNIFIED	SAN BERNARDINO	Maple Elementary	61/67710-00-0007	6/24/2009	Received	$ 2,304
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bret Harte Elementary	61/67439-00-0087	6/24/2009	Received	$ 14,812
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bret Harte Elementary	61/67439-00-0091	6/24/2009	Received	$ 9,163
SACRAMENTO CITY UNIFIED	SACRAMENTO	Bret Harte Elementary	61/67439-00-0092	6/24/2009	Received	$ 700
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	NA	6/26/2009	Received	$ 175
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 6,020
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 28,226
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 1,641
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 9,394
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 2,149
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 4,552
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 6,456
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 388
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 6,456
GROSSMONT UNION HIGH	SAN DIEGO	El Cajon Valley High	NA	6/29/2009	Received	$ 9,330
INGLEWOOD UNIFIED	LOS ANGELES	Monroe Middle	NA	6/29/2009	Received	$ 6,057
INGLEWOOD UNIFIED	LOS ANGELES	Monroe Middle	NA	6/29/2009	Received	$ 7,670
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens Intermediate	NA	6/29/2009	Received	$ 1,350,238
MONTEBELLO UNIFIED	LOS ANGELES	Joseph Gascon Elementary	NA	6/29/2009	Received	$ 217,602
MONTEBELLO UNIFIED	LOS ANGELES	Joseph Gascon Elementary	NA	6/29/2009	Received	$ 155,470
MONTEBELLO UNIFIED	LOS ANGELES	Joseph Gascon Elementary	NA	6/29/2009	Received	$ 620,984
MONTEBELLO UNIFIED	LOS ANGELES	Suava Intermediate	NA	6/29/2009	Received	$ 1,171,996
LOS ANGELES UNIFIED	LOS ANGELES	Belvedere Elementary	NA	6/30/2009	Received	$ 258,601
LOS ANGELES UNIFIED	LOS ANGELES	Crenshaw High	NA	6/30/2009	Received	$ 754,701
LOS ANGELES UNIFIED	LOS ANGELES	Grape Street Elementary	NA	6/30/2009	Received	$ 160,772
LOS ANGELES UNIFIED	LOS ANGELES	Hollywood High	NA	6/30/2009	Received	$ 399,932
LOS ANGELES UNIFIED	LOS ANGELES	Hooper Elementary	NA	6/30/2009	Received	$ 24,816
LOS ANGELES UNIFIED	LOS ANGELES	Hyde Park Elementary	NA	6/30/2009	Received	$ 93,347
LOS ANGELES UNIFIED	LOS ANGELES	Ninety-Third Street Elementary	NA	6/30/2009	Received	$ 160,243
LOS ANGELES UNIFIED	LOS ANGELES	Oxnard Elementary	NA	6/30/2009	Received	$ 430,312
LOS ANGELES UNIFIED	LOS ANGELES	San Fernando Middle	NA	6/30/2009	Received	$ 256,228
LOS ANGELES UNIFIED	LOS ANGELES	San Gabriel Avenue Elementary	NA	6/30/2009	Received	$ 399,184
LOS ANGELES UNIFIED	LOS ANGELES	Sixty-First Street Elementary	NA	6/30/2009	Received	$ 231,264
LOS ANGELES UNIFIED	LOS ANGELES	Sixty-First Street Elementary	NA	6/30/2009	Received	$ 143,402
LOS ANGELES UNIFIED	LOS ANGELES	South Park Elementary	NA	6/30/2009	Received	$ 147,509
LOS ANGELES UNIFIED	LOS ANGELES	Stoner Elementary	NA	6/30/2009	Received	$ 147,598
LOS ANGELES UNIFIED	LOS ANGELES	Telfair Elementary	NA	6/30/2009	Received	$ 459,750
LOS ANGELES UNIFIED	LOS ANGELES	Twenty-Eight Street Elementary	NA	6/30/2009	Received	$ 693,827
LOS ANGELES UNIFIED	LOS ANGELES	Twenty-Forth Street Elementary	NA	6/30/2009	Received	$ 1,008,225
LOS ANGELES UNIFIED	LOS ANGELES	Vinedale Elementary	NA	6/30/2009	Received	$ 178,621
INGLEWOOD UNIFIED	LOS ANGELES	Monroe Middle	NA	7/2/2009	Received	$ 7,670
ORANGE UNIFIED	ORANGE	Yorba Middle	61/66621-00-0055	7/9/2009	Received	$ 30
FRANKLIN-MCKINLEY	SANTA CLARA	Santee Elementary	61/69450-00-0001	7/13/2009	Received	$ 262,249
KEPPEL UNION	LOS ANGELES	Lake Los Angeles Elementary	61/64642-00-0042	7/13/2009	Received	$ 279
FARMERSVILLE UNIFIED	TULARE	Farmersville Jr. High	61/75325-00-0003	7/15/2009	Received	$ 76,242

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
FARMERSVILLE UNIFIED	TULARE	Snowden (George L.) Elementary	61/75325-00-0004	7/15/2009	Received	$ 94,188
OAKLAND UNIFIED	ALAMEDA	Elmhurst Middle	NA	7/16/2009	Received	$ 493,290
OAKLAND UNIFIED	ALAMEDA	Jefferson Elementary	NA	7/16/2009	Received	$ 80,695
OAKLAND UNIFIED	ALAMEDA	Lafayette Elementary	NA	7/16/2009	Received	$ 49,814
OAKLAND UNIFIED	ALAMEDA	Lockwood Elementary	NA	7/16/2009	Received	$ 85,624
CALIPATRIA UNIFIED	IMPERIAL	Calipatria High	61/63107-00-0006	7/20/2009	Received	$ 1,014,851
PALO VERDE UNIFIED	RIVERSIDE	Blythe Middle	61/67181-00-0001	7/20/2009	Received	$ 125,685
PALO VERDE UNIFIED	RIVERSIDE	Palo Verde Valley High	61/67181-00-0010	7/20/2009	Received	$ 193,481
RIVERDALE JOINT UNIFIED	FRESNO	Riverdale Elementary	61/75408-00-0001	7/20/2009	Received	$ 2,162
SOUTH SAN FRANCISCO	SAN MATEO	Parkway Heights Middle	61/69070-00-0001	7/20/2009	Received	$ 114,017
HAYWARD UNIFIED	ALAMEDA	Mount Eden High	61/61192-00-0004	7/22/2009	Received	$ 84,703
KINGS RIVER UNION ELEMENTARY	TULARE	Kings River Elementary	61/71969-00-0001	7/22/2009	Received	$ 20,972
DINUBA UNIFIED	TULARE	Dinuba High	61/75531-00-0024	7/27/2009	Received	$ 334,482
KINGS CANYON UNIFIED	FRESNO	Al Conner	NA	7/27/2009	Received	$ 11,980
KINGS CANYON UNIFIED	FRESNO	Sheridan	NA	7/27/2009	Received	$ 9,067
MADERA UNIFIED	MADERA	George Washington Elementary	61/65243-00-0005	7/27/2009	Received	$ 14,360
MADERA UNIFIED	MADERA	James Madison Elementary	61/65243-00-0001	7/27/2009	Received	$ 6,587
MADERA UNIFIED	MADERA	James Monroe Elementary	61/65243-00-0002	7/27/2009	Received	$ 1,823
MADERA UNIFIED	MADERA	La Vina Elementary	61/65243-00-0007	7/27/2009	Received	$ 4,930
MADERA UNIFIED	MADERA	Sierra Vista Elementary	61/65243-00-0004	7/27/2009	Received	$ 7,136
MOUNTAIN VIEW	LOS ANGELES	Miramonte Elementary	61/64816-00-0012	7/27/2009	Received	$ 9,985
LOS ANGELES UNIFIED	LOS ANGELES	Glenwood Elementary	NA	7/28/2009	Received	$ 25,768
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	NA	7/28/2009	Received	$ 743,049
LOS ANGELES UNIFIED	LOS ANGELES	Weigand Elementary	NA	7/28/2009	Received	$ 252,899
CENTINELLA VALLEY UNION HIGH	LOS ANGELES	Leuzinger High	61/64352-00-0008	7/29/2009	Received	$ 24,181
INGLEWOOD UNIFIED	LOS ANGELES	Woodworth Elementary	NA	7/29/2009	Received	$ 5,363
TWIN RIVERS UNIFIED	SACRAMENTO	Del Paso Heights Elementary	NA	7/29/2009	Received	$ 10,015
TWIN RIVERS UNIFIED	SACRAMENTO	Don Julio Junior High	NA	7/29/2009	Received	$ 894,777
TWIN RIVERS UNIFIED	SACRAMENTO	Fairbanks Elementary	NA	7/29/2009	Received	$ 10,427
TWIN RIVERS UNIFIED	SACRAMENTO	Fairbanks Elementary	NA	7/29/2009	Received	$ 250,519
TWIN RIVERS UNIFIED	SACRAMENTO	Garden Valley Elementary	NA	7/29/2009	Received	$ 9,737
TWIN RIVERS UNIFIED	SACRAMENTO	Grant High	NA	7/29/2009	Received	$ 336,448
TWIN RIVERS UNIFIED	SACRAMENTO	Harmon Johnson Elementary	NA	7/29/2009	Received	$ 10,850
TWIN RIVERS UNIFIED	SACRAMENTO	Highlands Academy of Arts and Desig	NA	7/29/2009	Received	$ 1,728,600
TWIN RIVERS UNIFIED	SACRAMENTO	Noralto Elementary	NA	7/29/2009	Received	$ 11,128
TWIN RIVERS UNIFIED	SACRAMENTO	North Avenue Elementary	NA	7/29/2009	Received	$ 9,688
TWIN RIVERS UNIFIED	SACRAMENTO	Northwood Elementary	NA	7/29/2009	Received	$ 11,128
TWIN RIVERS UNIFIED	SACRAMENTO	Rio Linda Elementary	NA	7/29/2009	Received	$ 11,128
TWIN RIVERS UNIFIED	SACRAMENTO	Smithe Academy of Arts and Sciences	NA	7/29/2009	Received	$ 11,128
TWIN RIVERS UNIFIED	SACRAMENTO	Martin Luther King Technology Acade	NA	7/29/2009	Received	$ 348,661
TWIN RIVERS UNIFIED	SACRAMENTO	Grant High	NA	7/29/2009	Received	$ 1,669,200
SACRAMENTO CITY UNIFIED	SACRAMENTO	Castori (Michael J.) Elementary	61/67397-00-0003	7/30/2009	Received	$ 633,992
TWIN RIVERS UNIFIED	SACRAMENTO	Castori (Michael J.) Elementary	61/76505-00-0004	7/30/2009	Received	$ 120,810
FRESNO UNIFIED	FRESNO	Academy for New Americans	NA	8/5/2009	Received	$ 8,161
FRESNO UNIFIED	FRESNO	Addams Elementary	NA	8/5/2009	Received	$ 18,854
FRESNO UNIFIED	FRESNO	Anthony Elementary	NA	8/5/2009	Received	$ 27,240
FRESNO UNIFIED	FRESNO	Aynesworth Elementary	NA	8/5/2009	Received	$ 8,282
FRESNO UNIFIED	FRESNO	Balderas Elementary	NA	8/5/2009	Received	$ 5,601
FRESNO UNIFIED	FRESNO	Birney Elementary	NA	8/5/2009	Received	$ 8,460
LOS ANGELES UNIFIED	LOS ANGELES	Wilson High	NA	8/10/2009	Received	$ 1,437,977
VICTOR ELEMENTARY	SAN BERNARDINO	Challenger Elementary	NA	8/10/2009	Received	$ 1,016
VICTOR ELEMENTARY	SAN BERNARDINO	Grant Tree East Elementary	NA	8/10/2009	Received	$ 67
VICTOR ELEMENTARY	SAN BERNARDINO	Grant Tree East Elementary	NA	8/10/2009	Received	$ 199
VICTOR ELEMENTARY	SAN BERNARDINO	Irwin Elementary	NA	8/10/2009	Received	$ 262
VICTOR ELEMENTARY	SAN BERNARDINO	Puesta del Sol Elementary	NA	8/10/2009	Received	$ 609
ORANGE UNIFIED	ORANGE	Jordan Elementary	61/66621-00-0036	8/12/2009	Received	$ 513,709
ORANGE UNIFIED	ORANGE	Jordan Elementary	61/66621-00-0038	8/12/2009	Received	$ 219,823
ORANGE UNIFIED	ORANGE	Jordan Elementary	61/66621-00-0040	8/12/2009	Received	$ 92,190
GERBER UNION ELEMENTARY	TEHAMA	Gerber Elementary	NA	8/13/2009	Received	$ 222,598
GERBER UNION ELEMENTARY	TEHAMA	Gerber Elementary	NA	8/13/2009	Received	$ 827,229
LE GRAND UNION ELEMENTARY	MERCED	Le Grand Elementary	61/65722-00-0001	8/17/2009	Received	$ 11,366
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-3085	8/17/2009	Received	$ 8,542
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Bayside Elementary	NA	8/19/2009	Received	$ 440,540
SOUTH BAY UNION ELEMENTARY	SAN DIEGO	Berry Elementary	NA	8/19/2009	Received	$ 353,391
BIG PINE UNIFIED	INYO	Big Pine Elementary	61/63248-00-0001	8/24/2009	Received	$ 465,089
CUTLER-OROSI JOINT UNIFIED	TULARE	Cutler Elementary	61/71860-00-0104	8/24/2009	Received	$ 24,502
TWIN RIVERS UNIFIED	SACRAMENTO	Madison Elementary	NA	8/24/2009	Received	$ 2,122,194
TWIN RIVERS UNIFIED	SACRAMENTO	Martin Luther King Jr. Technology Aca	NA	8/24/2009	Received	$ 1,609,665
COMPTON UNIFIED	LOS ANGELES	McKinley Elementary	61/73437-00-0051	8/25/2009	Received	$ 2,695
COMPTON UNIFIED	LOS ANGELES	Willowbrook Middle	61/73437-00-0053	8/25/2009	Received	$ 18,802
LOS ANGELES UNIFIED	LOS ANGELES	112 th Street Elementary	NA	8/26/2009	Received	$ 25,340
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-3191	8/26/2009	Received	$ 2,947
LOS ANGELES UNIFIED	LOS ANGELES	Flournoy Elementary	NA	8/26/2009	Received	$ 128,025
TWIN RIVERS UNIFIED	SACRAMENTO	HAAD West	NA	8/26/2009	Received	$ 8,094,431
CUTLER-OROSI JOINT UNIFIED	TULARE	Orosi High	NA	8/27/2009	Received	$ 4,875
OAKLAND UNIFIED	ALAMEDA	Lowell Middle	61/61259-00-0010	8/27/2009	Received	$ 254,409
OAKLAND UNIFIED	ALAMEDA	Lowell Middle	61/61259-00-0011	8/27/2009	Received	$ 933,800
CORNING UNION ELEMENTARY	TEHAMA	Olive View Elementary	61/71498-00-0009	8/28/2009	Received	$ 17,954

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
SANTA RITA UNION ELEMENTARY	MONTEREY	La Joya Elementary	61/66191-00-0001	8/28/2009	Received	$ 1,613,616
LODI UNIFIED	SAN JOAQUIN	Beckman Elementary	61/68585-00-0069	9/14/2009	Received	$ 260
LODI UNIFIED	SAN JOAQUIN	Creekside Elementary	61/68585-00-0071	9/14/2009	Received	$ 280
LODI UNIFIED	SAN JOAQUIN	Sutherland Elementary	61/68585-00-0068	9/14/2009	Received	$ 53
SANTA PAULA ELEMENTARY	VENTURA	Barbara Webster Elementary	NA	9/14/2009	Received	$ 12,564
WILLIAMS UNIFIED	COLUSA	Williams High	61/61622-00-0001	9/14/2009	Received	$ 7,108
EL MONTE UNION HIGH	LOS ANGELES	South El Monte High	61/64519-00-0008	9/22/2009	Received	$ 3,726
EL MONTE CITY ELEMENTARY	LOS ANGELES	Columbia Elementary	61/64501-00-0003	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Cortada Elementary	61/64501-00-0004	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Gidley Elementary	61/64501-00-0005	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Legore Elementary	61/64501-00-0006	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Loma Elementary	61/64501-00-0007	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Mulhall Elementary	61/64501-00-0008	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Potrero Elementary	61/64501-00-0009	9/23/2009	Received	$ 3,492
EL MONTE CITY ELEMENTARY	LOS ANGELES	Thompson Elementary	61/64501-00-0010	9/23/2009	Received	$ 3,492
RIVERBANK UNIFIED	STANISLAUS	Riverbank High	61/75556-00-0001	9/23/2009	Received	$ 168,492
BANTA ELEMENTARY	SAN JOAQUIN	Banta Elementary	61/68486-00-0014	9/30/2009	Received	$ 342,626
BANTA ELEMENTARY	SAN JOAQUIN	Banta Elementary	61/68486-00-0015	9/30/2009	Received	$ 109,056
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-3192	10/7/2009	Received	$ 2,953
KINGS CANYON UNIFIED	FRESNO	Jefferson Elementary	NA	10/13/2009	Received	$ 31,853
KINGS CANYON UNIFIED	FRESNO	McCord Elementary	NA	10/13/2009	Received	$ 7,111
KINGS CANYON UNIFIED	FRESNO	Sheridan	NA	10/13/2009	Received	$ 12,288
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0004	10/21/2009	Received	$ 43,040
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0013	10/21/2009	Received	$ 63,471
JOHN SWETT UNIFIED	CONTRA COSTA	John Swett High	61/61697-00-0014	10/21/2009	Received	$ 4,458
SANTA MARIA JOINT UNION HIGH	SANTA BARBARA	Santa Maria High	NA	10/23/2009	Received	$ 2,670,203
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Workman (William) High	61/73445-00-0010	10/28/2009	Received	$ 13,636
BASSETT UNIFIED	LOS ANGELES	Sunkist Elementary	61/64295-00-0026	10/29/2009	Received	$ 2,187
BASSETT UNIFIED	LOS ANGELES	Vanwig (J. E.) Elementary	61/64295-00-0022	10/29/2009	Received	$ 968
PETALUMA CITY SCHOOLS	SONOMA	McDowell Elementary	61/70854-00-0004	11/2/2009	Received	$ 4,194
BRAWLEY UNION HIGH	IMPERIAL	Brawley High	61/63081-00-0001	11/18/2009	Received	$ 135,414
KONOCTI UNIFIED	LAKE	Oak Hill Middle	61/64022-00-0070	11/18/2009	Received	$ 158
KONOCTI UNIFIED	LAKE	Oak Hill Middle	61/64022-00-0071	11/18/2009	Received	$ 285
KONOCTI UNIFIED	LAKE	Pomo Elementary	61/64022-00-0072	11/18/2009	Received	$ 116
JOHN SWETT UNIFIED	CONTRA COSTA	Swett (John) High	61/61697-00-0007	11/23/2009	Received	$ 361,407
JOHN SWETT UNIFIED	CONTRA COSTA	Swett (John) High	61/61697-00-0010	11/23/2009	Received	$ 7,164
WESTMORLAND UNION ELEMENTARY	IMPERIAL	Westmorland Elementary	61/63230-00-0002	11/24/2009	Received	$ 14,110
KONOCTI UNIFIED	LAKE	Burns Valley Elementary	NA	12/10/2009	Received	$ 51,193
COMPTON UNIFIED	LOS ANGELES	Lincoln Elementary	61/73437-00-0048	12/21/2009	Received	$ 2,338
COMPTON UNIFIED	LOS ANGELES	Lincoln Elementary	61/73437-00-0050	12/21/2009	Received	$ 1,394
COMPTON UNIFIED	LOS ANGELES	Longfellow Elementary	61/73437-00-0055	12/21/2009	Received	$ 8,127
COMPTON UNIFIED	LOS ANGELES	Roosevelt Elementary	61/73437-00-0058	12/21/2009	Received	$ 1,969
COMPTON UNIFIED	LOS ANGELES	Vanguard Learning Center	61/73437-00-0059	12/21/2009	Received	$ 5,284
ALTA VISTA ELEMENTARY	TULARE	Alta Vista Elementary	61/71811-00-0008	12/24/2009	Received	$ 4,942
KINGS CANYON UNIFIED	FRESNO	Washington Elementary	NA	1/7/2010	Received	$ 13,689
BAKERSFIELD CITY	KERN	Casa Loma Elementary	NA	1/11/2010	Received	$ 869,239
OAKLAND UNIFIED	ALAMEDA	Brookfield Elementary	NA	1/19/2010	Received	$ 3,570
OAKLAND UNIFIED	ALAMEDA	Madison Middle	NA	1/19/2010	Received	$ 340,562
OAKLAND UNIFIED	ALAMEDA	Maxwell Park	NA	1/19/2010	Received	$ 331,103
OAKLAND UNIFIED	ALAMEDA	Oakland High	NA	1/19/2010	Received	$ 22,501
OAKLAND UNIFIED	ALAMEDA	Prescott Elementary	NA	1/19/2010	Received	$ 7,173
ORANGE UNIFIED	ORANGE	Esplanade Elementary	61/66621-00-0059	1/19/2010	Received	$ 625,281
ORANGE UNIFIED	ORANGE	Esplanade Elementary	61/66621-00-0060	1/19/2010	Received	$ 91,030
ORANGE UNIFIED	ORANGE	Portola Middle	61/66621-00-0061	1/19/2010	Received	$ 82,472
ORANGE UNIFIED	ORANGE	Portola Middle	61/66621-00-0062	1/19/2010	Received	$ 266,596
KLAMATH TRINITY JOINT UNIFIED	HUMBOLDT	Hoopa Valley High	61/62901-00-0030	1/25/2010	Received	$ 107,927
PASADENA UNIFIED	LOS ANGELES	San Rafael Elementary	61/64881-00-0018	1/25/2010	Received	$ 22,670
PASADENA UNIFIED	LOS ANGELES	San Rafael Elementary	61/64881-00-0019	1/25/2010	Received	$ 8,555
COMPTON UNIFIED	LOS ANGELES	Roosevelt Middle	61/73437-00-0057	1/28/2010	Received	$ 1,921
COMPTON UNIFIED	LOS ANGELES	Tibby Elementary	61/73437-00-0063	1/28/2010	Received	$ 4,121
COMPTON UNIFIED	LOS ANGELES	Walton Middle	61/73437-00-0065	1/28/2010	Received	$ 2,877
COMPTON UNIFIED	LOS ANGELES	Washington Elementary	61/73437-00-0060	1/28/2010	Received	$ 3,650
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	61/68130-00-0001	1/28/2010	Received	$ 3,009
GROSSMONT UNION HIGH	SAN DIEGO	Mount Miguel High	61/68130-00-0002	1/28/2010	Received	$ 19,360
PIERCE JOINT UNIFIED	COLUSA	Pierce High	61/61614-00-0011	1/29/2010	Received	$ 28,956
HANFORD ELEMENTARY	KINGS	King (Martin Luther, Jr.) Elementary	61/63917-00-0015	2/16/2010	Received	$ 397
PASADENA UNIFIED	LOS ANGELES	Muir High	61/64881-00-0023	2/24/2010	Received	$ 1,215
CENTINELLA VALLEY UNION HIGH	LOS ANGELES	Lawndale High	61/64352-00-0013	3/2/2010	Received	$ 56,357
CENTINELLA VALLEY UNION HIGH	LOS ANGELES	Lawndale High	61/64352-00-0014	3/2/2010	Received	$ 46,521
VICTOR ELEMENTARY	SAN BERNARDINO	Challenger Elementary	NA	3/9/2010	Received	$ 3,756
VICTOR ELEMENTARY	SAN BERNARDINO	Del Rey Elementary	NA	3/9/2010	Received	$ 5,067
VICTOR ELEMENTARY	SAN BERNARDINO	Green Tree East Elementary	NA	3/9/2010	Received	$ 123,098
VICTOR ELEMENTARY	SAN BERNARDINO	Irwin Elementary	NA	3/9/2010	Received	$ 12,414
VICTOR ELEMENTARY	SAN BERNARDINO	Puesta del Sol Elementary	NA	3/9/2010	Received	$ 4,394
LODI UNIFIED	SAN JOAQUIN	Morada Middle	61/68585-00-0062	3/10/2010	Received	$ 151,494
COMPTON UNIFIED	LOS ANGELES	Tibby Elementary	61/73437-00-0062	3/11/2010	Received	$ 7,819
COMPTON UNIFIED	LOS ANGELES	Walton Middle	61/73437-00-0064	3/11/2010	Received	$ 242
COMPTON UNIFIED	LOS ANGELES	Willard (Frances) Elementary	61/73437-00-0069	3/11/2010	Received	$ 822

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
KLAMATH-TRINITY JOINT UNIFIED	HUMBOLDT	Hoopa Elementary	NA	3/15/2010	Received	$ 13,152
KLAMATH-TRINITY JOINT UNIFIED	HUMBOLDT	Hoopa Elementary	NA	3/15/2010	Received	$ 1,026,985
KLAMATH-TRINITY JOINT UNIFIED	HUMBOLDT	Hoopa Elementary	NA	3/15/2010	Received	$ 812,261
KLAMATH-TRINITY JOINT UNIFIED	HUMBOLDT	Hoopa Elementary	NA	3/15/2010	Received	$ 31,938
KLAMATH-TRINITY JOINT UNIFIED	HUMBOLDT	Hoopa Elementary	NA	3/15/2010	Received	$ 52,584
LOS ANGELES UNIFIED	LOS ANGELES	Banning (Phineas) Senior High	61/64733-00-3198	3/15/2010	Received	$ 17,284
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-3194	3/15/2010	Received	$ 6,551
LOS ANGELES UNIFIED	LOS ANGELES	Crenshaw Senior High	61/64733-00-3714	3/15/2010	Received	$ 4,100
LOS ANGELES UNIFIED	LOS ANGELES	Dorsey (Susan Miller) Senior High	61/64733-00-3442	3/15/2010	Received	$ 4,181
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-3182	3/15/2010	Received	$ 2,395
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-3183	3/15/2010	Received	$ 2,795
LOS ANGELES UNIFIED	LOS ANGELES	Los Angeles Senior High	61/64733-00-3435	3/15/2010	Received	$ 8,175
LOS ANGELES UNIFIED	LOS ANGELES	Washington (George) Preparatory Hig	61/64733-00-3201	3/15/2010	Received	$ 3,758
LOS ANGELES UNIFIED	LOS ANGELES	Washington (George) Preparatory Hig	61/64733-00-3203	3/15/2010	Received	$ 6,191
PASADENA UNIFIED	LOS ANGELES	Blair High	61/64881-00-0025	3/16/2010	Received	$ 245
OAKLAND UNIFIED	ALAMEDA	Claremont Middle	NA	3/18/2010	Received	$ 49,204
PALMDALE ELEMENTARY	LOS ANGELES	Chaparral Elementary	61/64857-00-0001	3/23/2010	Received	$ 6,800
ARMONA UNION ELEMENTARY	KINGS	Parkview Middle	61/63875-00-0002	4/1/2010	Received	$ 2,379
FAIRFAX ELEMENTARY	KERN	Virginia Avenue Elementary	61/63461-00-0004	4/1/2010	Received	$ 7,214
SANTA PAULA ELEMENTARY	VENTURA	Grace Thille Elementary	NA	4/1/2010	Received	$ 8,122
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-3188	4/5/2010	Received	$ 15,766
LOS ANGELES UNIFIED	LOS ANGELES	Bell Senior High	61/64733-00-3190	4/5/2010	Received	$ 29,584
LOS ANGELES UNIFIED	LOS ANGELES	Fremont (John C.) Senior High	61/64733-00-3712	4/5/2010	Received	$ 23,549
LOS ANGELES UNIFIED	LOS ANGELES	Jordan (David Starr) Senior High	61/64733-00-3731	4/5/2010	Received	$ 4,368
SANTA PAULA ELEMENTARY	VENTURA	Glen City Elementary	NA	4/5/2010	Received	$ 6,333
HEBER ELEMENTARY	IMPERIAL	Heber Elementary	61/63131-00-0002	4/7/2010	Received	$ 1,996
SANTA PAULA ELEMENTARY	VENTURA	Barbara Webster Elementary	NA	4/7/2010	Received	$ 6,305
SANTA PAULA ELEMENTARY	VENTURA	Isbell Middle	NA	4/12/2010	Received	$ 28,046
SANTA PAULA ELEMENTARY	VENTURA	Isbell Middle	NA	4/12/2010	Received	$ 8,599
ANTIOCH UNIFIED	CONTRA COSTA	Antioch High	NA	4/19/2010	Received	$ 78,202
ANTIOCH UNIFIED	CONTRA COSTA	Antioch Middle	NA	4/19/2010	Received	$ 1,985
ANTIOCH UNIFIED	CONTRA COSTA	Fremont Elementary	NA	4/19/2010	Received	$ 2,753
ANTIOCH UNIFIED	CONTRA COSTA	Marsh Elementary	NA	4/19/2010	Received	$ 2,668
ANTIOCH UNIFIED	CONTRA COSTA	Turner Elementary	NA	4/19/2010	Received	$ 1,776
ROWLAND UNIFIED	LOS ANGELES	Villacorta Elementary	61/73452-00-0002	4/23/2010	Received	$ 328,965
LOS ANGELES UNIFIED	LOS ANGELES	Banning (Phineas) Senior High	61/64733-00-3197	4/26/2010	Received	$ 67,735
LOS ANGELES UNIFIED	LOS ANGELES	Garfield (James A.) Senior High	61/64733-00-3762	4/26/2010	Received	$ 7,026
LOS ANGELES UNIFIED	LOS ANGELES	Garfield (James A.) Senior High	61/64733-00-3768	4/26/2010	Received	$ 15,332
LOS ANGELES UNIFIED	LOS ANGELES	Wilson (Woodrow) Senior High	61/64733-00-3780	4/26/2010	Received	$ 5,731
BASSETT UNIFIED	LOS ANGELES	Julian (Don) Elementary	61/64295-00-0024	4/28/2010	Received	$ 634,582
BASSETT UNIFIED	LOS ANGELES	Julian (Don) Elementary	61/64295-00-0025	4/28/2010	Received	$ 660,920
LOS ANGELES UNIFIED	LOS ANGELES	Crenshaw Senior High	61/64733-00-3717	4/30/2010	Received	$ 5,517
TWIN RIVERS UNIFIED	SACRAMENTO	Highlands Academy of Arts and Desig	NA	5/11/2010	Received	$ 1,015,000
ORANGE UNIFIED	ORANGE	Prospect Elementary	61/66621-00-0058	5/17/2010	Received	$ 149,852
HACIENDA LA PUENTE UNIFIED	LOS ANGELES	Workman Elementary	61/73445-00-0009	6/1/2010	Received	$ 221,624
LOS ANGELES UNIFIED	LOS ANGELES	Locke (Alain Leroy) Senior High	61/64733-00-3741	6/1/2010	Received	$ 17,393
SANTA BARBARA ELEMENTARY	SANTA BARBARA	Franklin Elementary	61/69278-00-0001	6/3/2010	Received	$ 1,220
PASADENA UNIFIED	LOS ANGELES	Washington Elementary	NA	6/9/2010	Received	$ 7,383
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens High	NA	6/22/2010	Received	$ 8,358
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens High	NA	6/22/2010	Received	$ 7,788
LOS ANGELES UNIFIED	LOS ANGELES	Locke (Alain Leroy) Senior High	61/64733-00-3747	6/28/2010	Received	$ 845
MONTEBELLO UNIFIED	LOS ANGELES	Bell Gardens High	NA	6/29/2010	Received	$ 10,693
OAKLAND UNIFIED	ALAMEDA	Castlemont High	NA	6/31/2010	Received	$ 14,313
OAKLAND UNIFIED	ALAMEDA	Elmhurst Middle	NA	6/31/2010	Received	$ 29,908
OAKLAND UNIFIED	ALAMEDA	Elmhurst Middle	NA	6/31/2010	Received	$ 11,424
OAKLAND UNIFIED	ALAMEDA	Frick Middle	NA	6/31/2010	Received	$ 18,870
OAKLAND UNIFIED	ALAMEDA	Frick Middle	NA	6/31/2010	Received	$ 24,778
OAKLAND UNIFIED	ALAMEDA	Golden Gate Elementary	NA	6/31/2010	Received	$ 27,113
OAKLAND UNIFIED	ALAMEDA	Havenscourt Middle	NA	6/31/2010	Received	$ 12,863
OAKLAND UNIFIED	ALAMEDA	Lockwood Elementary	NA	6/31/2010	Received	$ 28,050
OAKLAND UNIFIED	ALAMEDA	Lowell Middle	NA	6/31/2010	Received	$ 3,519
OAKLAND UNIFIED	ALAMEDA	Madison Middle	NA	6/31/2010	Received	$ 20,084
OAKLAND UNIFIED	ALAMEDA	Martin Luther King Jr.	NA	6/31/2010	Received	$ 24,717
OAKLAND UNIFIED	ALAMEDA	Maxwell Park Elementary	NA	6/31/2010	Received	$ 27,850
OAKLAND UNIFIED	ALAMEDA	McClymonds High	NA	6/31/2010	Received	$ 11,724
OAKLAND UNIFIED	ALAMEDA	Parker Elementary	NA	6/31/2010	Received	$ 10,006
OAKLAND UNIFIED	ALAMEDA	Sherman Elementary	NA	6/31/2010	Received	$ 20,462
OAKLAND UNIFIED	ALAMEDA	Webster Academy	NA	6/31/2010	Received	$ 23,996
OAKLAND UNIFIED	ALAMEDA	Whittier Elementary	NA	6/31/2010	Received	$ 25,277
PASADENA UNIFIED	LOS ANGELES	Washington Elementary	NA	7/7/2010	Received	$ 7,383
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson (Thomas) Senior High	61/64733-00-3773	7/8/2010	Received	$ 2,720
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts Senior High	61/64733-00-3737	7/8/2010	Received	$ 229
LOS ANGELES UNIFIED	LOS ANGELES	Belmont Senior High	61/64733-00-3760	7/12/2010	Received	$ 232
LOS ANGELES UNIFIED	LOS ANGELES	Garfield (James A.) Senior High	61/64733-00-3767	7/12/2010	Received	$ 6,320
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson (Thomas) Senior High	61/64733-00-3771	7/12/2010	Received	$ 9,618
LOS ANGELES UNIFIED	LOS ANGELES	Jefferson (Thomas) Senior High	61/64733-00-3772	7/12/2010	Received	$ 2,020
LE GRAND UNION HIGH	MERCED	Le Grand High	61/65730-00-0001	7/13/2010	Received	$ 63,432
CORCORAN JOINT UNIFIED	KINGS	Fremont (John C.) Elementary	61/63891-00-0010	7/21/2010	Received	$ 24,076

ERP Aplications Workload List as of Dec 28, 2010

District	County	Site	Application Number	OPSC Received	Status	Estimated State Grant
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts Senior High	61/64733-00-3739	7/26/2010	Received	$ 2,078
LOS ANGELES UNIFIED	LOS ANGELES	Manual Arts Senior High	61/64733-00-3744	8/3/2010	Received	$ 14,484
LOS ANGELES UNIFIED	LOS ANGELES	Locke (Alain Leroy) Senior High	61/64733-00-3742	8/3/2010	Received	$ 52,517
HANFORD ELEMENTARY	KINGS	Jefferson Elementary	61/63917-00-0011	9/3/2010	Received	$ 7,797
LOS ANGELES UNIFIED	LOS ANGELES	Belmont Senior High	61/64733-00-3759	9/7/2010	Received	$ 23,381
LOS ANGELES UNIFIED	LOS ANGELES	Wilson (Woodrow) Senior High	61/64733-00-3782	9/7/2010	Received	$ 136
ORANGE UNIFIED	ORANGE	Portola Middle	61/66621-00-0066	9/13/2010	Received	$ 6,969
PASADENA UNIFIED	LOS ANGELES	Madison Elementary	NA	9/13/2010	Received	$ 26,091
PASADENA UNIFIED	LOS ANGELES	Madison Elementary	NA	9/13/2010	Received	$ 26,091
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0002	9/13/2010	Received	$ 664,358
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0008	9/13/2010	Received	$ 53,572
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0009	9/13/2010	Received	$ 73,895
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0010	9/13/2010	Received	$ 85,001
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0011	9/13/2010	Received	$ 86,259
SALINAS CITY ELEMENTARY	MONTEREY	Los Padres Elementary	61/66142-00-0013	9/13/2010	Received	$ 77,438
LOS ANGELES UNIFIED	LOS ANGELES	Huntington Park Senior High	61/64733-00-3186	9/21/2010	Received	$ 10,304
LOS ANGELES UNIFIED	LOS ANGELES	Dorsey (Susan Miller) Senior High	61/64733-00-3441	9/22/2010	Received	$ 181,109
LOS ANGELES UNIFIED	LOS ANGELES	Locke (Alain Leroy) Senior High	61/64733-00-3766	9/27/2010	Received	$ 5,248
LOS ANGELES UNIFIED	LOS ANGELES	Wilson (Woodrow) Senior High	61/64733-00-3779	9/27/2010	Received	$ 27,598
CUYAMA JOINT UNIFIED	SANTA BARBARA	Cuyama Elementary	NA	9/30/2010	Received	$ 335,476
MARYSVILLE JOINT UNIFIED	YUBA	Lindhurst High	NA	10/20/2010	Received	$ 23,725
MARYSVILLE JOINT UNIFIED	YUBA	Yuba Gardens Intermediate	NA	10/20/2010	Received	$ 12,978
MARYSVILLE JOINT UNIFIED	YUBA	Lindhurst High	NA	10/20/2010	Received	$ 1,472,749
FRESNO	PARLIER UNIFIED	Parlier High	61/62364-00-0008	10/25/2010	Received	$ 18,710
LOS ANGELES	COMPTON UNIFIED	Dominguez High	61/73437-00-0070	10/25/2010	Received	$ 5,955
SAN JOAQUIN	LODI UNIFIED	Needham (Clyde W.) Elementary	61/68585-00-0073	10/26/2010	Received	$ 245,203
TOTAL FUNDING REQUESTED						**$ 113,214,079**

INFORMATION ITEM

FACILITY HARDSHIP/REHABILITATION APPROVALS WITHOUT FUNDING

AS OF DECEMBER 15, 2010

FACILITY HARDSHIP/REHABILITATION APPROVALS WITHOUT FUNDING

As of December 15, 2011

FACILITY HARDSHIP

School District	County	Application Number	School Site Name	SAB Approval Date	Funding Application Due Date	Estimated State Grant *
Julian Union High	San Diego	51/68171-00-002	Julian High	5/26/2010	10/26/2011*	$1,872,338
					Estimated Total Need (State Share) *	$1,872,338

REHABILITATION

School District	County	Application Number	School Site Name	SAB Approval Date	Funding Application Due Date	Estimated State Grant *
Monterey Pennisula Unified	Monterey	58/66092-00-001	Marina Vista Elementary	9/26/2007	3/24/2011	$52,578
Monterey Pennisula Unified	Monterey	58/66092-00-002	Marshall Elementary	9/26/2007	3/24/2011	$159,571
Monterey Pennisula Unified	Monterey	58/66092-00-003	La Mesa Elementary	9/26/2007	3/24/2011	$183,661
Monterey Pennisula Unified	Monterey	58/66092-00-005	Central Coast Continuation High	9/26/2007	3/24/2011	$210,666
Pacific Unified	Monterey	58/75150-00-001	Pacific Valley	3/25/2009	9/25/2010**	$447,284
Scotts Valley Unified	Santa Cruz	58/75432-00-001	Scotts Valley High	4/23/2008	10/23/09***	
Sacramento City Unified	Sacramento	58/67439-00-002	McClatchy High	9/23/2009	3/23/2011	$57,392
Sonora Elementary	Tuolomne	58/72371-00-001	Sonora Elementary	1/27/2010	7/27/2011	$1,271,160
Dos Palos - Oro Loma Joint Unified	Merced	58/75317-00-001	Dos Palos Elementary	2/24/2010	8/24/2011	$162,867
Fort Sage Unified	Lassen	58/75036-00-001	Herlong HS, Render HS, Sierra Primary, Fort Sage Middle	2/24/2010	8/24/2011**	$313,097
John Swett Unified	Contra Costa	58/61697-00-001	John Swett High	5/26/2010	10/26/2011	$1,807,652
					Estimated Total Need (State Share) *	$4,665,928

Facility Hardship and Rehabilitation Estimated Total Need (State Share) *	$6,538,266

***** Does not include Financial Hardship

** Funding Application received & being processed

*** Time extension request received & being processed

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School Facility Financing

A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

By Joel Cohen

Prepared at the Request of Senator Quentin Kopp

FEBRUARY 1999

CRB 99-01

CALIFORNIA RESEARCH BUREAU

School Facility Financing

A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

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CRB 99-01

CONTENTS

EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is 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 student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides $6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the $6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the $6.7 billion approved by Proposition 1A, experts estimate that an additional $10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction then it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?

- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a $9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide $6.7 billion to public K-12 schools and $2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the $6.7 billion available to K–12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947[1] when the state legislature created the State Allocation Board.[2] Chapter 243, Statutes of 1947, established the State Allocation Board[3] as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.[4] Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.[5]

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.[6] Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949[7] and 1952[8] established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."[9] During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.[10] The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.[11] This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.[12] School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing[13] in the amount of $250 million.[14] This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that $400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to $250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."[15] In arguments

against the bond, opponents argued that $250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of $185 million was put before the voters. Proponents of this initiative stated that the amount was "extremely" conservative. A comprehensive study by the State Department of Education at that time revealed that $198 million was needed, while the Department of Finance estimated the need at $250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included "poison pill" language that limited the Legislature's ability to appropriate any additional funds for school construction beyond that in the various propositions.[16] If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized $30 million[17] for a new program to finance the rehabilitation and construction of earthquake safe schools,[18] and for the renovation of buildings that the earthquake damaged.[19] This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of $350 million of which $250 million was set aside for structural repairs due to earthquakes.[20] This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,[21] and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.[22] Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.[23]

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.[24] In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.[25]

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of $1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.[26] In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.[27] 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 Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.[28] Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created "priority points" for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district's application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.[29] The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 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.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three[30] state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of $550 million[31] that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a $3.8 billion surplus, to fill the gap.[32] In 1979, lawmakers approved a $2.7 billion (in 1978 dollars) "bailout" plan to assist schools and local governments.[33] Within a year, the state surplus was reduced to roughly $1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.[34]

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.[35] School districts that received funds from the state were required to pay rent to the State as low as $1 per year, creating an "unofficial" grant program.[36] In addition, school districts were to contribute up to 10% of the project's cost from local funds.[37] However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.[38] Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.[39] At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.[40] The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be $1.9 billion.[41] Further, CASH estimated that school districts would need an additional $400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.[42] The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of $200 million for school construction projects. This amount was later reduced to $100 million.[43]

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.[44] Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.[45] The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent[46] of the cost that would be necessary to build a new facility not to exceed $125 per student.[47] School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.[48] This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13[49] by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.[50] This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.[51]

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an $800 million bond initiative. It specifically set aside $100 million to cover asbestos removal.[52]

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.[53] As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly $1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over $991 million.[54] Total demand for school facility improvement in 1986 was nearly $2.3 billion - an amount that significantly outweighed the $800 million voters approved in that year's bond initiative.[55] Even with a boost of funding of $150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.[56] By 1988, the shortfall had grown to $4 billion, in spite of the fact that voters had approved $2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.[57] This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at $1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.[58] California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of $8700 per house.[59] By 1990, total development fees for some homes reached $30,000.[60] Statewide, developer fees have increased from $31 million in 1978 to $200 million in 1997.

In 1998, the State Allocation Board increased the fee to $1.93 per square foot.[61] With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.[62] The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an "operating grant" of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.[63]

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of "unhoused students," or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.[64] In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a "substantial"[65] enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a "substantial" year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the "substantial enrollment" criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.[66]

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.[67] A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for $1.6 billion and in 1992 for $2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,[68] and that an estimated $3 billion would be needed annually for new school construction.[69] However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a $1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.[70]

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.[71]

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.[72] The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.[73] Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.[74]

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided $2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need $7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.[75] This $7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed $3 billion to upgrade and modernize its schools.[76] Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.[77] Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.[78]

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked $95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to $200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.[79] The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than $1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,[80] there were times during the past five decades when bond money was not available for periods of four or six years.[81]

The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation.[82] Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue $2 billion a year for 10 years.[83] Governor Wilson proposed $2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides $6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional $10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS		
Title of Bond Initiative	**Date & Year of Election**	**Funds Authorized**
School Building Aid Law of 1949	November 8, 1949	$250,000,000
School Building Aid Law of 1952	November 4, 1952	$185,000,000
School Building Aid Law of 1952	November 2, 1954	$100,000,000
School Building Aid Law of 1952	November 4, 1958	$220,000,000
School Building Aid Law of 1952	June 7, 1960	$300,000,000
School Building Aid Law of 1952	June 5, 1962	$200,000,000
School Building Aid Law of 1952	November 3, 1964	$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	$800,000,000
1988 School Facilities Bond Act	November 8, 1988	$800,000,000
1990 School Facilities Bond Act	June 5, 1990	$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

A) New amount of 1966 bond authorization available for regular program is $185.5 million after deducting $35 million reserved for compensatory education facilities, $9.5 million for regional occupational centers, and $35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.

B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.

C) One billion dollars earmarked for higher education facilities

D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).[84] The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.[85]

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.[86]

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.[87] Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,[88] along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.[89] In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.[90] In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for $4,000 per year. Hardship cases could lease portables for $2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at $9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease–Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for "official" school purposes. "Official" school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state's various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board's Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board's review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district's application fit a program's description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, "special considerations," or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or "specials," and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A "special" occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district's administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.[91] The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.[92]

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.[93] The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional $6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: $3.35 billion available immediately; and $3.35 billion available after July 2, 2000. Of the $3.35 billion that is immediately available, $1.35 billion is earmarked for new construction, $800 million for modernization, $500 million for hardship cases, and $700 million for class-size reduction.

For the second $3.35 billion distribution, $1.55 billion will be available for new construction, $1.3 billion for modernization, and $500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused [94]average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	$5,200	$2,496
Middle School	$5,500	$2,640
High School	$7,200	$3,456

It is anticipated that the initial $1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.[95] The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is "hardship," in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.[96]

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous "Lease Purchase Program." This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a "hardship" case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.[97] Proposition 1A suspends, until 2006, the Court's ruling.[98] With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to $1.93 per square foot.[99] Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board's previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board's previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state. Priority 2 projects-growth and modernization-received 100 percent funding form the state.	Growth projects receive 50 percent funding based on a per pupil formula from the state. Modernization projects receive 80% funding from the state. Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.	Excessive costs are not reimbursed by the state and school districts keep costs savings.
MODERNIZATION PROJECTS	Buildings must be at least 30 years old.	Buildings must be at least 25 years old.
PROJECT APPROVAL	Projects were approved three times in conjunction with the planning, site acquisition and construction phases.	Projects receive one approval (except hardships that receive two approvals).
FUND ALLOCATION	Funds were allotted after each phase.	Funds are allotted only after DSA approves plans, unless there is a hardship.
MAINTENANCE OF FACILITIES	Required school districts to set aside two percent of their general fund for ongoing maintenance.	Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.
PROPERTY LIENS	State maintains a lien to properties it funds.	State does not hold liens, and existing liens are released.
ARCHITECTURAL APPROVAL	Division of State Architect approved all plans.	The Division of State Architect or a state approved private engineering firm may approve plans.

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was $1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is $1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.[100] This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.[101]

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.[102] The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.[103] Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.[104] One can obtain information in person or from the office's Internet site.[105] In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be "bumped" up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive $6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly $10 billion, while some estimates have put the figure at $40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately $25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.[106]

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about $2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

ENDNOTES

[1] Chapter 243, Statutes of 1947.

[2] 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 of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

[3] Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

[4] California Government Code 15502.

[5] Government Code 15490.

[6] While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

[7] Amendments to the Constitution, Proposition 1, November 8, 1949.

[8] Amendments to the Constitution, Proposition 4, November 4, 1952.

[9] Op.cit.

[10] California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

[11] This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

[12] Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

[13] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[14] Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

[15] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[16] Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

[17] School Building Safety Fund, December 1971.

[18] The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

[19] Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

[20] Ibid.

[21] State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

[22] Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

[23] Op.cit., p. 2.
[24] Ibid.
[25] Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.
[26] Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.
[27] Section 17700 et al., Education Code.
[28] Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.
[29] Op.cit., p. 2.
[30] Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.
[31] Proposition 1 of 1976 would have provided $250 million, and Proposition 1 of 1978 would have provided $300 million.
[32] Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.
[33] Ibid.
[34] Karmin, Bennett. California's Bankrupt Schools." New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A–14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.
[35] Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.
[36] While the loan program was still on the books, the state made exceptions to aid school districts.
[37] California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.
[38] California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.
[39] Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.
[40] Ibid.
[41] Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).
[42] This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.
[43] Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.
[44] Assembly Bill 62, Chapter 820, Statutes of 1982.
[45] California Department of Education. California Year-Round Education Directory 1997-98.
[46] For example, a school district that needed to build a new elementary school that cost $4 million could receive $400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

[47] Chapter 886, Statutes of 1986, added provisions that capped the grant at $125 per student.
[48] School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than $1.8 billion in construction costs since its inception. In 1997-98, $66 million was allocated from the "mega item" of the state budget. About $40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.
[49] Proposition 46 on the June 1986 Ballot.
[50] Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.
[51] Proposition 46: Property Taxation, June 3, 1986.
[52] DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.
[53] School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.
[54] Op.cit.
[55] Op.cit.
[56] State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.
[57] AB 2926, Statutes of 1986.
[58] These were referred to as the Mira, Hart, Murrieta court cases.
[59] Later that year, fees were capped by the Legislature at $1.50 per square foot on residential units statewide.
[60] Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.
[61] Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.
[62] Chapter 1261, Statutes of 1990.
[63] Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.
[64] Op.cit.
[65] Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.
[66] Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.
[67] The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.
[68] Department of Finance, School Populations Projections. 1998.
[69] Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.
[70] Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.
[71] County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.
[72] Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.
[73] The passage required a two-thirds vote by the legislature.
[74] November 1993, Proposition 170 failed by 70 percent.

[75] Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the $7 billion, $1.6 billion was estimated for overhauls of buildings over 30 years old, and $5.6 billion for new construction and classroom additions.

[76] Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

[77] If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

[78] See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

[79] Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

[80] State bonds were proposed biannually in 1988, 1990, and 1992.

[81] In 1976 and 1978 bond measures were defeated by the electorate.

[82] "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

[83] "Huge School Bond Mulled" California Public Finance, September 8, 1997, p. 1.

[84] This included the type of facility and the number of teaching stations (classrooms).

[85] The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

[86] For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid $48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

[87] A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

[88] This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

[89] Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

[90] Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

[91] Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

[92] Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

[93] To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

[94] The number of students above the maximum number set by CDE to be in a classroom.

[95] The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

[96] In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

[97] The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

[98] In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see Mira Development Corporation v. City of San Diego, William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles, Murietta Valley Unified School District v. County of Riverside. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

[99] If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

[100] Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

[101] However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

[102] Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

[103] One streamlined step is the self-certification process in the Lease Purchase Program.

[104] However, in light of the office's accomplishments, the author had to request information routinely more than once.

[105] www.dgs.ca.gov/opsc.

[106] School Services of California.

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.

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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 ~~enate Bill~~ 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

[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:

- Education Code section 17088.3 provides the requirements for a district to qualify for a lease.

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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 17088.5 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 superintendent and the public. Subdivision (b) provides nearly identical requirements for a county

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

[46] Specifically, Education Code section 17150.

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] regarding funding for school facilities approved by the SAB pursuant to the Leroy F. Greene School

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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.

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]

[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

[71] On September 30, 2010, the Commission adopted a Statement of Decision (03-TC~~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

[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

[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.]
>
> 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.

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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.