

**ITEM 4**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**  
**AND PROPOSED STATEMENT OF DECISION**

Education Code Section 84660  
Statutes 1981, Chapter 764 (SB 841); Statutes 1990, Chapter 1372 (SB 1854)  
California Code of Regulations, Title 5, Sections 57201, 57202, 57205  
Register 82, No. 28 (July 10, 1982), Pages 677-678; Register 91, No. 23 (June 7, 1991) Pages  
377-378; Register 95, No. 23 (June 9, 1995) Page 379.

“Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding  
Proposals” Chancellor’s Office, California Community Colleges

*Deferred Maintenance (CCD)*  
02-TC-48

Santa Monica Community College District, Claimant

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*Deferred Maintenance (CCD), 02-TC-48*  
*Final Staff Analysis and Proposed Statement of Decision*

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

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JUN 27 2003

**COMMISSION ON  
STATE MANDATES**

**TEST CLAIM FORM**

Claim No. 02-TC-48

Local Agency or School District Submitting Claim

**SANTA MONICA COMMUNITY COLLEGE DISTRICT**

Contact Person

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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.

**Deferred Maintenance (CCD)**

Chapter 1372, Statutes of 1990      Chapter 764, Statutes of 1981

Education Code Section 84660

Title 5, California Code of Regulations Sections    57201    57202    57205

Executive Order: Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals of December 2001

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

Name and Title of Authorized Representative

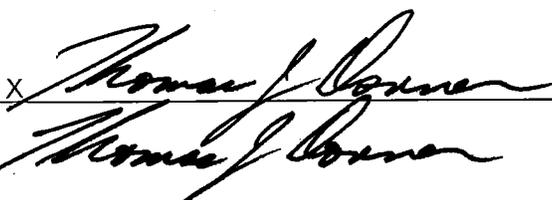
Telephone No.

Thomas J. Donner  
Executive Vice President of Business and Administration

FAX (310) 434-4201  
(310) 434-8200

Signature of Authorized Representative

Date

X 

June 23 2003  
6-23-03

1 Claim Prepared By:  
2 Keith B. Petersen  
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4 5252 Balboa Avenue, Suite 807  
5 San Diego, CA 92117  
6 Voice: (858) 514-8605  
7

8 BEFORE THE  
9  
10 COMMISSION ON STATE MANDATES  
11  
12 STATE OF CALIFORNIA  
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14 Test Claim of: )  
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16 Santa Monica Community College )  
17 District )  
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19 Test Claimant. )  
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No. CSM \_\_\_\_\_  
  
Chapter 1372, Statutes of 1990  
Chapter 764, Statutes 1981  
  
Education Code Section 84660  
  
Title 5, California Code of Regulations,  
Section 57201  
Title 5, California Code of Regulations,  
Section 57202  
Title 5, California Code of Regulations,  
Section 57205  
  
Executive Order: Preparation Guidelines  
for Scheduled Maintenance and  
Hazardous Substances Project Funding  
Proposals of December 2001  
  
DEFERRED MAINTENANCE (CCD)  
  
TEST CLAIM FILING

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PART 1. 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." Santa Monica Community College District is a "school district" as defined in Government Code section 17519.<sup>1</sup>

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for community colleges to comply with the administrative procedures required by the state to qualify and obtain facility maintenance funds pursuant to the Community College Facility Deferred Maintenance and Special Repair Program, and the Community College Hazardous Substances Program.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

None. The Community College Facility Deferred Maintenance and Special Repair Program, and the Community College Hazardous Substance Program was adopted after this date.

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<sup>1</sup> Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

1 SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

2 Chapter 764, Statutes of 1981, Section 1, added Education Code Section  
3 84660<sup>2</sup> to ensure that the facilities of the California Community Colleges are repaired  
4 and maintained on a timely basis in order to provide for the safe utilization of these  
5 facilities as well as providing for the prevention of further structural damage resulting in  
6 more costly repairs. This section further intends that funds be allocated to provide for  
7 the deferred maintenance and special repair of community college facilities.

8 Chapter 764, Statutes of 1981, Section 1, added Education Code Section  
9 84661<sup>3</sup> to require the Board of Governors to adopt rules and regulations for the

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<sup>2</sup> Education Code Section 84660, as added by Chapter 764, Statutes of 1981,  
Section 1:

“The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that public community college facilities are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.”

<sup>3</sup> Education Code Section 84661, as added by Chapter 764, Statutes of 1981,  
Section 1:

“The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred

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1 allocation of funds for the deferred maintenance and special repair of community  
2 college facilities. Districts are required to prepare and submit to the Board a five-year  
3 maintenance plan which includes plans for preventative as well as deferred  
4 maintenance in order to be eligible for state funding of deferred maintenance.  
5 Recipient districts are further required to contribute an amount equal to the state funds  
6 to be allocated for facility deferred maintenance and special repair as a condition for  
7 receiving state funding. "Deferred maintenance and special repair" is defined to mean  
8 unusual, nonrecurring work to restore a facility to a safe and continually useable  
9 condition for which it was intended.

10 Chapter 764, Statutes of 1981, Section 1, added Education Code Section  
11 84662<sup>4</sup>, subdivision (a), to prohibit districts from receiving funds for deferred

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maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the Board of Governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended."

<sup>4</sup> Education Code Section 84662, as added by Chapter 764, Statutes of 1981, Section 1:

1 maintenance or special repair unless the district expends at least 1/2 percent of its  
2 current operating budget for ongoing maintenance. Subdivision (b) gives the Board of  
3 Governors the discretion to increase the percentage. Subdivision (c) intends that funds  
4 received by districts supplement, not supplant, district deferred maintenance funds.

5 Chapter 1372, Statutes of 1990, Section 681, amended Education Code Section  
6 84660<sup>5</sup>. The previous version of this code section is now labeled subdivision (a) to

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“(a) No community college district shall receive funds pursuant to this chapter unless the district expends at least 1/2 percent of its current operating budget for ongoing maintenance.

(b) The board of governors may, pursuant to Section 84661, increase the percentage specified in subdivision (a).

(c) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district deferred maintenance funds.”

<sup>5</sup> Education Code Section 84660, added by Chapter 764, Statutes of 1981, Section 1, as amended by Chapter 1372, Statutes of 1990, Section 681:

“(a) The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that public community college facilities the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.

(b) The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by

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1 which a minor technical change was made. New subdivision (b) was added to include  
2 the language and content of former Section 84661, repealed by Chapter 1372, Statutes  
3 of 1990, Section 682. Former subdivisions (a) through (c) of former Section 84662,  
4 repealed by Chapter 1372, Statutes of 1990, Section 683, were renumbered and added  
5 as subdivisions (c) through (e), respectively.

6 Title 5, California Code of Regulations, Section 57200 (added in 1982 and last  
7 amended in 1991), requires that the provisions of this Chapter apply to the  
8 administration and implementation of the Community College Facility Deferred  
9 Maintenance and Special Repair Program.

10 Title 5, California Code of Regulations, Section 57201 (added in 1982 and last

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community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the Board of Governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.

(a)(c) No community college district shall receive funds pursuant to this chapter unless the district expends at least 1/2 percent of its current operating budget for on-going maintenance.

(b)(d) The board of governors may, pursuant to ~~Section 84664~~ subdivision (b), increase the percentage specified in subdivision (a)(c).

(e)(e) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district deferred maintenance funds."

1 amended in 1991), requires each district applying for funds to:

- 2 (a) Prepare and submit to the Chancellor a current five-year maintenance  
3 plan. The plan must be consistent with the district's five-year capital outlay  
4 plan, but shall not duplicate that plan. The plan shall provide for ongoing  
5 as well as deferred maintenance.
- 6 (b) Maintain a level of ongoing maintenance during the year for which funds  
7 requested are commensurate with the level of activity in prior years.

8 Title 5, California Code of Regulations, Section 57202 (added in 1982 and last  
9 amended in 1991), requires districts to apply to the Chancellor's Office for funding for  
10 deferred maintenance in the form and manner specified by the Chancellor.

11 Title 5, California Code of Regulations, Section 57203 (added in 1982 and last  
12 amended in 1991), requires the Chancellor to allocate the funds appropriated by the  
13 Legislature as soon as such funds are available, and in accordance with the project  
14 priorities established, provided that ten percent (10%) of the funds may be held for  
15 contingencies that may occur during the year. Any such funds initially held for  
16 contingencies must be allocated prior to the end of the fiscal year.

17 Title 5, California Code of Regulations, Section 57204 (added in 1982 and last  
18 amended in 1991), requires the Chancellor to evaluate district applications and rank  
19 projects for funding. Projects must be ranked for funding using the following criteria,  
20 equally:

- 21 (a) Health and Safety. Priority shall be given to projects necessary to meet

1 safety requirements and to correct hazardous conditions which, if  
2 uncorrected, would result in facility closure or danger to staff and students  
3 utilizing the facility.

4 (b) Prevention of Further More Costly Repairs. Priority shall be given to  
5 deferred maintenance for instructional facilities necessary to prevent  
6 substantially increased maintenance or replacement costs in the future.

7 (c) Disruption of Programs. Priority shall be given to projects necessary to  
8 prevent disruption of instructional programs.

9 Title 5, California Code of Regulations, Section 57205 (added in 1982 and last  
10 amended in 1991), provides that the Chancellor will allocate funds for only fifty percent  
11 of the costs for a deferred maintenance project. When it accepts funds, a district must  
12 agree to spend district funds necessary to complete the project. The Chancellor shall,  
13 as may be necessary, waive this requirement in whole or in part for projects for which  
14 the district demonstrates that it cannot make available fifty percent of the costs for the  
15 project from other sources. The Chancellor shall waive this requirement only for  
16 projects with high priority for funding. Highest priority is given to those projects which  
17 the Chancellor determines are necessary to prevent a facility from being closed. Where  
18 projects would otherwise be of equal rank, first priority is given to those projects for  
19 which the district provides matching funds.



1 by creating new state-mandated duties related to the uniquely governmental function of  
2 providing public services and these statutes apply to community college districts and do  
3 not apply generally to all residents and entities in the state.<sup>8</sup>

4 The new duties mandated by the state upon community college districts require  
5 state reimbursement of the direct and indirect costs of labor, materials and supplies,  
6 data processing services and software, contracted services and consultants, equipment  
7 and capital assets, staff and student training and travel to implement the following  
8 activities:

- 9 A) To prepare and submit to the Chancellor's office a current Scheduled  
10 Maintenance Five-Year Plan (241/SM5Y) on or before December 1<sup>st</sup> of  
11 each year, consistent with the district's five-year capital outlay plan, but  
12 not a duplicate of that plan, including plans for preventative, ongoing and  
13 deferred maintenance, pursuant to Education Code Section 84660,  
14 subdivision (b), Title 5, California Code of Regulations Section 57201,  
15 subdivision (a), and the "Preparation Guidelines for Scheduled  
16 Maintenance and Hazardous Substances Project Funding Proposals of

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<sup>8</sup> 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."

- 1 December 2001,” (Hereinafter: “Preparation Guidelines”), page 4.
- 2 B) To maintain a level of ongoing maintenance during the year for which  
3 funds requested are commensurate with the level of activity in prior years,  
4 pursuant to Title 5, California Code of Regulations Section 57201,  
5 subdivision (b). The district must expend at least 1/2 percent of its current  
6 operating budget for ongoing maintenance to receive funds for deferred  
7 maintenance or special repair, pursuant to Education Code Section  
8 84660, subdivision (c), and the “Preparation Guidelines,” page 5.
- 9 C) To apply for deferred maintenance funding in the form and manner  
10 specified by the Chancellor’s office, pursuant to Title 5, California Code of  
11 Regulations Section 57202.
- 12 D) To provide for a matching contribution for deferred maintenance unless  
13 waived by the Chancellor’s office for financial hardship, pursuant to  
14 Education Code Section 84660. When it accepts funds, the district must  
15 agree to spend district funds necessary to complete the project (up to 50  
16 percent), unless completely or partially waived by the Chancellor’s office,  
17 pursuant to pursuant to Title 5, California Code of Regulations Section  
18 57205. If the district cannot meet the financial commitment because of  
19 financial hardship, it shall submit a match waiver request, pursuant to the  
20 “Preparation Guidelines” page 7.
- 21 E) To prepare and submit a Scheduled Maintenance Project Funding

1 Proposal (241/SM/PFP) on or before December 1<sup>st</sup> of each year, pursuant  
2 to the "Preparation Guidelines," pages 3, 6.

3 1) To include data that will readily identify the district, college, or  
4 center project, and the assigned district priority number, pursuant  
5 to the "Preparation Guidelines," pages 4, 6

6 2) To certify the Proposal by the signature of the Chief Executive  
7 Officer or other authorized individual, pursuant to the "Preparation  
8 Guidelines," pages 4, 6.

9 3) To identify what programs are affected, describe the maintenance  
10 problem, preventative measures taken, adverse effects if not  
11 corrected and corrective measures needed to remedy the situation,  
12 pursuant to the "Preparation Guidelines," page 6.

13 4) To clearly identify project type, facility type(s) involved, how long  
14 the problem existed, and the adverse effects if uncorrected (a  
15 safety hazard must be supported by valid documentation), pursuant  
16 to the "Preparation Guidelines," page 6.

17 5) To include construction management costs (including expenditures  
18 for Architects, Engineering, Permit Fees, Plan Check Fees, as well  
19 as Construction Management) as a supplemental element of the  
20 project cost estimate in the "Permits and Fees" budget summary  
21 line item, pursuant to the "Preparation Guidelines," pages 6, 7.

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- 1 F) To use, as may be necessary, district staff for completion of projects if  
2 their staff performs these tasks on overtime or weekends, or temporary  
3 staff hired to perform tasks from the beginning to the completion of  
4 project, pursuant to the "Preparation Guidelines," page 7.
- 5 G) To issue a written request to the Chancellor's Office Facilities Planning  
6 Unit identifying any revisions a district needs to make to the preliminary  
7 list of projects to ensure that the scope, costs and projected match  
8 requirements are still feasible, pursuant to the "Preparation Guidelines,"  
9 page 7.
- 10 H) To submit the final year claims by May 15<sup>th</sup> of the fourth year to the  
11 Chancellor's office, pursuant to the "Preparation Guidelines," page 8.
- 12 I) To notify the program monitor and supply information, if the bid amount is  
13 greater than the amount of the proposal, any information of why the bid is  
14 greater than the initial cost estimate and how the district plans on meeting  
15 the shortfall of funding while addressing the scope of the proposal,  
16 pursuant to the "Preparation Guidelines," page 8.
- 17 J) To submit claims to the Chancellor's office on a monthly basis for work  
18 complete or in progress, except for claims of less than \$1,000 (unless it is  
19 the final claim), pursuant to the "Preparation Guidelines," page 9.
- 20 K) To include in any claims containing district staff hourly charges, the  
21 detailed itemized records for the direct expenses showing work performed

1 beyond the normal work period, pursuant to the "Preparation Guidelines,"  
2 page 9.

3 L) To prepare and submit a Hazardous Substances Project Funding  
4 Proposal (241/HS/PFP) on or before January 30th of each year, pursuant  
5 to the "Preparation Guidelines," pages 23, 25.

6 1) To include data that will readily identify the district, college, or  
7 center project, and the assigned district priority number, pursuant  
8 to the "Preparation Guidelines," pages 24, 25.

9 2) To certify the Proposal by the signature of the Chief Executive  
10 Officer or other authorized individual, pursuant to the "Preparation  
11 Guidelines," pages 24.

12 3) To identify what programs are affected, describe the hazardous  
13 problem, means of controlling the hazardous materials, adverse  
14 effects if not corrected and corrective measures needed to remedy  
15 the situation, and the age and size of the building, pursuant to the  
16 "Preparation Guidelines," page 25.

17 4) To clearly identify project type, facility type(s) involved, how long  
18 the problem existed, and the adverse effects if uncorrected (a  
19 safety hazard must be supported by valid documentation), pursuant  
20 to the "Preparation Guidelines," page 25.

21 5) To include construction management costs (including expenditures

1 for Architects, Engineering, Permit Fees, Plan Check Fees, as well  
2 as Construction Management) as a supplemental element of the  
3 project cost estimate in the "Permits and Fees" budget summary  
4 line item, pursuant to the "Preparation Guidelines," pages 25, 26.

5 M) To use, as may be necessary, district staff for completion of projects if  
6 their staff performs these tasks on overtime or weekends, or temporary  
7 staff hired to perform tasks from the beginning to the completion of  
8 project, pursuant to the "Preparation Guidelines," page 26.

9 N) To issue a written request to the Chancellor's Office Facilities Planning  
10 Unit identifying any revisions a district needs to make to the preliminary  
11 list of projects to ensure that the scope, costs and projected match  
12 requirements are still feasible, pursuant to the "Preparation Guidelines,"  
13 page 26.

14 O) To submit the final year claims by May 15<sup>th</sup> of the fourth year to the  
15 Chancellor's office, pursuant to to the "Preparation Guidelines," page 27.

16 P) To notify the program monitor and supply information, if the bid amount is  
17 greater than the amount of the proposal, any information of why the bid is  
18 greater than the initial cost estimate and how the district plans on meeting  
19 the shortfall of funding while addressing the scope of the proposal,  
20 pursuant to the "Preparation Guidelines," page 27.

21 Q) To submit claims to the Chancellor's office on a monthly basis for work

1 complete or in progress, except for claims of less than \$1,000 (unless it is  
2 the final claim), pursuant to the "Preparation Guidelines," page 28.

3 R) To include in any claims containing district staff hourly charges, the  
4 detailed itemized records for the direct expenses showing work performed  
5 beyond the normal work period, pursuant to the "Preparation Guidelines,"  
6 page 28.

7 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

8 None of the Government Code Section 17556<sup>9</sup> statutory exceptions to a finding

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<sup>9</sup> 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.

1 of costs mandated by the state apply to this test claim. Note, that to the extent  
2 community college districts may have previously performed functions similar to those  
3 mandated by the referenced code sections, such efforts did not establish a preexisting  
4 duty that would relieve the state of its constitutional requirement to later reimburse  
5 community college districts when these activities became mandated.<sup>10</sup>

6 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

7 No funds are appropriated by the state for reimbursement of these costs  
8 mandated by the state and there is no other provision of law for recovery of costs from  
9 any other source.

10 PART IV. ADDITIONAL CLAIM REQUIREMENTS

11 The following elements of this claim are provided pursuant to Section 1183, Title  
12 2, California Code of Regulations:

13 Exhibit 1: Thomas J. Donner, Executive Vice President of  
14 Business and Administration  
15 Santa Monica Community College District

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(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.”

<sup>10</sup> 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.”

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1 Exhibit 2: Copies of Statutes Cited

2 Chapter 1372, Statutes of 1990

3 Chapter 764, Statutes of 1981

4 Exhibit 3: Copies of Code Sections Cited

5 Education Code Section 84660

6 Education Code Section 84661

7 Education Code Section 84662

8 Exhibit 4: Copies of Regulations Cited

9 Title 5, California Code of Regulations, Section 57200

10 Title 5, California Code of Regulations, Section 57201

11 Title 5, California Code of Regulations, Section 57202

12 Title 5, California Code of Regulations, Section 57203

13 Title 5, California Code of Regulations, Section 57204

14 Title 5, California Code of Regulations, Section 57205

15 Exhibit 5: Copy of Executive Order Cited

16 Preparation Guidelines for Scheduled Maintenance and Hazardous  
17 Substances Project Funding Proposals of December 2001

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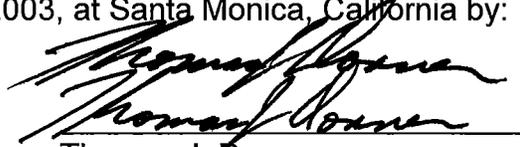
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764/81 Deferred Maintenance (CCD)

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 Santa Monica, California by:

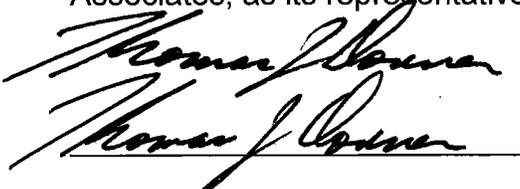


Thomas J. Donner  
Executive Vice President of  
Business and Administration  
Santa Monica Community College District

Voice: (310) 434-4201  
Fax: (310) 434-8200

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



6-23-03

Thomas J. Donner  
Executive Vice President of  
Business and Administration  
Santa Monica Community College District

Date

EXHIBIT 1  
DECLARATION

**DECLARATION OF THOMAS J. DONNER**

**Santa Monica Community College District**

**Test Claim of Santa Monica Community College District**

COSM No. \_\_\_\_\_

Chapter 1372, Statutes of 1990

Chapter 764, Statutes of 1981

Education Code Section 84660

Title 5, California Code of Regulations, Sections 57201 57202 57205

Executive Order: Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals of December 2001

**Deferred Maintenance (CCD)**

I, Thomas J. Donner, Executive Vice President of Business and Administration, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President of Business and Administration, I am responsible for the acquisition of funding for facility deferred maintenance. I am familiar with the provisions and requirements of the statutes, code sections, regulations, and executive order enumerated above, which require the district:

- A) To prepare and submit to the Chancellor's office a current Scheduled Maintenance Five-Year Plan (241/SM5Y) on or before December 1<sup>st</sup> of each year, consistent with the district's five-year capital outlay plan, but not a duplicate of that plan, including plans for preventative, ongoing and deferred maintenance, pursuant to Education Code Section 84660,

Declaration of Thomas J. Donner  
Test Claim of Santa Monica Community College District  
764/81 Deferred Maintenance (CCD)

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subdivision (b), Title 5, California Code of Regulations Section 57201, subdivision (a), and the "Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals of December 2001," (Hereinafter: "Preparation Guidelines"), page 4.

- B) To maintain a level of ongoing maintenance during the year for which funds requested are commensurate with the level of activity in prior years, pursuant to Title 5, California Code of Regulations Section 57201, subdivision (b). The district must expend at least 1/2 percent of its current operating budget for ongoing maintenance to receive funds for deferred maintenance or special repair, pursuant to Education Code Section 84660, subdivision (c), and the "Preparation Guidelines," page 5.
- C) To apply for deferred maintenance funding in the form and manner specified by the Chancellor's office, pursuant to Title 5, California Code of Regulations Section 57202.
- D) To provide for a matching contribution for deferred maintenance unless waived by the Chancellor's office for financial hardship, pursuant to Education Code Section 84660. When it accepts funds, the district must agree to spend district funds necessary to complete the project (up to 50 percent), unless completely or partially waived by the Chancellor's office, pursuant to Title 5, California Code of Regulations Section 57205. If the district cannot meet the financial commitment because of

financial hardship, it shall submit a match waiver request, pursuant to the "Preparation Guidelines" page 7.

- E) To prepare and submit a Scheduled Maintenance Project Funding Proposal (241/SM/PFP) on or before December 1<sup>st</sup> of each year, pursuant to the "Preparation Guidelines," pages 3, 6.
- 1) To include data that will readily identify the district, college, or center project, and the assigned district priority number, pursuant to the "Preparation Guidelines," pages 4, 6
  - 2) To certify the Proposal by the signature of the Chief Executive Officer or other authorized individual, pursuant to the "Preparation Guidelines," pages 4, 6.
  - 3) To identify what programs are affected, describe the maintenance problem, preventative measures taken, adverse effects if not corrected and corrective measures needed to remedy the situation, pursuant to the "Preparation Guidelines," page 6.
  - 4) To clearly identify project type, facility type(s) involved, how long the problem existed, and the adverse effects if uncorrected (a safety hazard must be supported by valid documentation), pursuant to the "Preparation Guidelines," page 6.
  - 5) To include construction management costs (including expenditures for Architects, Engineering, Permit Fees, Plan Check Fees, as well

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as Construction Management) as a supplemental element of the project cost estimate in the "Permits and Fees" budget summary line item, pursuant to the "Preparation Guidelines," pages 6, 7.

- F) To use, as may be necessary, district staff for completion of projects if their staff performs these tasks on overtime or weekends, or temporary staff hired to perform tasks from the beginning to the completion of project, pursuant to the "Preparation Guidelines," page 7.
- G) To issue a written request to the Chancellor's Office Facilities Planning Unit identifying any revisions a district needs to make to the preliminary list of projects to ensure that the scope, costs and projected match requirements are still feasible, pursuant to the "Preparation Guidelines," page 7.
- H) To submit the final year claims by May 15<sup>th</sup> of the fourth year to the Chancellor's office, pursuant to the "Preparation Guidelines," page 8.
- I) To notify the program monitor and supply information, if the bid amount is greater than the amount of the proposal, any information of why the bid is greater than the initial cost estimate and how the district plans on meeting the shortfall of funding while addressing the scope of the proposal, pursuant to the "Preparation Guidelines," page 8.
- J) To submit claims to the Chancellor's office on a monthly basis for work completed or in progress, except for claims of less than \$1,000 (unless it

is the final claim), pursuant to the "Preparation Guidelines," page 9.

- K) To include in any claims containing district staff hourly charges, the detailed itemized records for the direct expenses showing work performed beyond the normal work period, pursuant to the "Preparation Guidelines," page 9.
- L) To prepare and submit a Hazardous Substances Project Funding Proposal (241/HS/PFP) on or before January 30th of each year, pursuant to the "Preparation Guidelines," pages 23, 25.
  - 1) To include data that will readily identify the district, college, or center project, and the assigned district priority number, pursuant to the "Preparation Guidelines," pages 24, 25.
  - 2) To certify the Proposal by the signature of the Chief Executive Officer or other authorized individual, pursuant to the "Preparation Guidelines," pages 24.
  - 3) To identify what programs are affected, describe the hazardous problem, means of controlling the hazardous materials, adverse effects if not corrected and corrective measures needed to remedy the situation, and the age and size of the building, pursuant to the "Preparation Guidelines," page 25.
  - 4) To clearly identify project type, facility type(s) involved, how long the problem existed, and the adverse effects if uncorrected (a

Declaration of Thomas J. Donner  
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safety hazard must be supported by valid documentation), pursuant to the "Preparation Guidelines," page 25.

- 5) To include construction management costs (including expenditures for Architects, Engineering, Permit Fees, Plan Check Fees, as well as Construction Management) as a supplemental element of the project cost estimate in the "Permits and Fees" budget summary line item, pursuant to the "Preparation Guidelines," pages 25, 26.
- M) To use, as may be necessary, district staff for completion of projects if their staff performs these tasks on overtime or weekends, or temporary staff hired to perform tasks from the beginning to the completion of project, pursuant to the "Preparation Guidelines," page 26.
- N) To issue a written request to the Chancellor's Office Facilities Planning Unit identifying any revisions a district needs to make to the preliminary list of projects to ensure that the scope, costs and projected match requirements are still feasible, pursuant to the "Preparation Guidelines," page 26.
- O) To submit the final year claims by May 15<sup>th</sup> of the fourth year to the Chancellor's office, pursuant to the "Preparation Guidelines," page 27.
- P) To notify the program monitor and supply information, if the bid amount is greater than the amount of the proposal, any information of why the bid is greater than the initial cost estimate and how the district plans on meeting

Declaration of Thomas J. Donner  
Test Claim of Santa Monica Community College District  
Deferred Maintenance (CCD)

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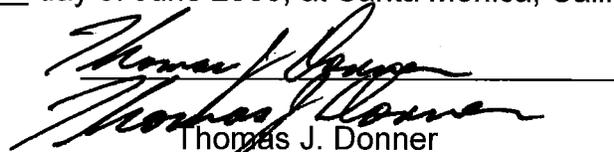
the shortfall of funding while addressing the scope of the proposal, pursuant to the "Preparation Guidelines," page 27.

- Q) To submit claims to the Chancellor's office on a monthly basis for work completed or in progress, except for claims of less than \$1,000 (unless it is the final claim), pursuant to the "Preparation Guidelines," page 28.
- R) To include in any claims containing district staff hourly charges, the detailed itemized records for the direct expenses showing work performed beyond the normal work period, pursuant to the "Preparation Guidelines," page 28.

It is estimated that the Santa Monica Community College District will incur more than \$1,000 in costs to implement these new duties mandated by the state for which the community college district will not be 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 Santa Monica, California



Thomas J. Donner  
Vice President of Business and Administration  
Santa Monica Community College District

**EXHIBIT 2**  
**COPIES OF STATUTES CITED**

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CHAPTER 764

An act to add Chapter 4.7 (commencing with Section 84660) to Part 50 of the Education Code, and to amend Items 687-301-146 to 687-301-736, inclusive, and the provisions applicable thereto, of Chapter 99 of the Statutes of 1981, relating to postsecondary education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1981. Filed with  
Secretary of State September 25, 1981.]

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 4.7 (commencing with Section 84660) is added to Part 50 of the Education Code, to read:

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CHAPTER 4.7. COMMUNITY COLLEGE FACILITY DEFERRED  
MAINTENANCE AND SPECIAL REPAIR PROGRAM

84660. The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that public community college facilities are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.

84661. The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the Board of Governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.

84662. (a) No community college district shall receive funds pursuant to this chapter unless the district expends at least  $\frac{1}{2}$  percent of its current operating budget for on-going maintenance.

(b) The board of governors may, pursuant to Section 84661, increase the percentage specified in subdivision (a).

(c) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district

deferred maintenance funds.

SEC. 2. Items 687-301-146 to 687-301-736, inclusive, and the provisions applicable thereto, of Chapter 99 of the Statutes of 1981, are amended to read:

687-301-146—For capital outlay, Board of Governors of the California Community Colleges, to be allocated, by the Board of Governors of the California Community Colleges to community college districts for expenditure by such districts, as set forth in the schedule below, payable from the Capital Outlay Fund for Public Higher Education..... 9,596,200

Schedule:

Palomar Community College District, Palomar College:

(1) Construct Mission Road improvements ..... 218,500

Butte Community College District, Butte College:

(3) Working drawings and construct sanitary sewer oxidation pond..... 72,500

Yosemite Community College District, Columbia College:

(12) Working drawings and construct removal of architectural barriers to the physically handicapped..... 130,900

Contra Costa Community College District, Contra Costa College:

(14) Working drawings and construct removal of architectural barriers to the physically handicapped..... 145,800

Imperial Community College District, Imperial Valley College:

(15) Working drawings and construct removal of architectural barriers to the physically handicapped—Phase II ..... 11,700

Los Angeles Community College District, East Los Angeles College:

(16) Construct removal of architectural barriers to the physically handicapped—Phase II ..... 26,800

Los Angeles City College:

(17) Construct removal of architectural barriers to the physically handicapped—Phase II ..... 51,200

Long Beach Community College District, Long Beach City College:

(18) Working drawings and construct

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- removal of architectural barriers to the physically handicapped..... 16,200
- Los Angeles Community College District, Los Angeles Trade Technical College:
- (19) Construct removal of architectural barriers to the physically handicapped—Phase II ..... 56,300
- Cabrillo Community College District, Cabrillo College:
- (20) Working drawings and construct removal of architectural barriers to the physically handicapped..... 108,700
- San Mateo Community College District, Skyline College:
- (21) Working drawings and construct removal of architectural barriers to the physically handicapped—Phase II ..... 11,300
- Peralta Community College District, Merritt College:
- (23) Construct removal of architectural barriers to the physically handicapped—Phase II ..... 261,500
- Glendale Community College District, Glendale College:
- (25) Working drawings and construct removal of architectural barriers to the physically handicapped..... 109,500
- San Bernardino Community College District, San Bernardino Valley College:
- (26) Working drawings and construct removal of architectural barriers to the physically handicapped—Phase II ..... 75,200
- San Mateo Community College District, Canada College:
- (27) Working drawings and construct removal of architectural barriers to the physically handicapped—Phase II ..... 76,400
- College of San Mateo:
- (28) Working drawings and construct removal of architectural barriers to the physically handicapped—Phase II ..... 154,400
- Monterey Peninsula Community College District, Monterey Penin-

sula College:	
(29) Working drawings and construct removal of architectural barriers to the physically handicapped.....	225,700
Santa Monica Community College District, Santa Monica College:	
(30) Equip remodel vocational building .....	29,500
Contra Costa Community College District, Contra Costa College:	
(31) Equip applied arts and administration complex .....	231,200
Peralta Community College District, Feather River College:	
(32) Equip vocational building .....	94,400
Santa Monica Community College District, Santa Monica College:	
(33) Equip remodel old library student activities and science basement .....	186,300
Long Beach Community College District, Long Beach City College:	
(34) Equip library addition (Liberal Arts Campus) .....	122,100
Los Angeles Community College District, East Los Angeles College:	
(35) Equip remodel existing library ..	26,300
Mendocino Community College District, Mendocino College:	
(36) Working drawings and construct energy conservation conversion ..	95,200
College of Alameda:	
(37) Working drawings and construct energy conservation conversion ..	49,300
(38) Working drawings and construct off-site development.....	1,370,400
(39) Working drawings and construct on-site development.....	1,898,700
(40) Working drawings for library and alternate learning center .....	65,900
Kern Community College District, Cerro Coso College:	
(42) Construct occupational laboratory building.....	3,249,500
Sierra Community College District, Sierra College:	
(45) Working drawings and construct	

removal of architectural barriers to the physically handicapped.....	68,400
Compton Community College District, Compton College:	
(46) Working drawings and construct removal of architectural barriers to the physically handicapped.....	155,700
San Mateo Community College District, College of San Mateo:	
(47) Working drawings and construct asbestos material removal.....	50,700
Community College Systemwide:	
(48) Project planning and preliminary planning.....	150,000

COMMUNITY COLLEGE CONSTRUCTION BOND ACT PROGRAM

687-301-736—For capital outlay, Board of Governors of the California Community Colleges, to be allocated, by the Board of Governors of the California Community Colleges to community college districts as set forth in the schedule below, payable from the State Construction Program Fund ..... 663,900

Schedule:

Rancho Santiago Community College District, Santa Ana College:	
(1) Construct removal of architectural barriers to the physically handicapped (Phase II) .....	18,400
Mount San Antonio Community College District, Mount San Antonio College:	
(2) Working drawings and construct removal of architectural barriers to the physically handicapped.....	148,100
Los Angeles Community College District, West Los Angeles College (Airport Campus):	
(3) Construct removal of architectural barriers to the physically handicapped (Phase II) .....	10,300
Contra Costa Community College District, Los Medanos College:	
(4) Working drawings and construct removal of architectural barriers to the physically handicapped.....	106,700
Diablo Valley College:	
(5) Working drawings and construct	

- removal of architectural barriers to the physically handicapped..... 197,400  
Merced Community College District, Merced College:
  - (6) Working drawings and construct removal of architectural barriers to the physically handicapped..... 24,400  
Los Angeles Community College District, Los Angeles Harbor College:
  - (7) Construct removal of architectural barriers to the physically handicapped (Phase II) ..... 13,700  
Yosemite Community College District, Modesto Junior College:
  - (8) Working drawings and construct removal of architectural barriers to the physically handicapped ..... 58,800  
Los Angeles Community College District, Los Angeles Southwest College:
  - (9) Construct removal of architectural barriers to the physically handicapped (Phase II) ..... 41,400  
Los Angeles Pierce College:
  - (10) Construct removal of architectural barriers to the physically handicapped (Phase II) ..... 22,300  
West Los Angeles College:
  - (11) Construct removal of architectural barriers to the physically handicapped (Phase II) ..... 17,600  
Los Angeles Valley College:
  - (12) Construct removal of architectural barriers to the physically handicapped (Phase II) ..... 4,800
- Provisions applicable to Items 687-301-146 through 687-301-736—for capital outlay, Board of Governors of the California Community Colleges:
2. Provided that notwithstanding the provisions of Section 2 of this act, the appropriations made in Item 687-301-146 for equipment items shall be available for expenditure only during the 1981-82 and 1982-83 fiscal years.
  3. Provided that these funds in Item 687-301-736, or so much thereof as may be necessary, are hereby appropriated for expenditures only for programs which have been approved pursuant to the provisions of the Community College Con-

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struction Act of 1980 (Chapter 4 (commencing with Section 81800) of Part 49 of the Education Code) as contemplated by the Community College Construction Program Bond Act of 1972 (Sections 1 to 10, inclusive, of Chapter 937 of the Statutes of 1971). All such appropriations shall be paid out of the State Construction Program Fund.

4. Provided, that the funds appropriated by category (48) of Item 687-301-146 shall be released only for those major capital outlay projects for working drawings or working drawings and construction which are anticipated to be included in the 1982-83 Governor's Budget. Provided further, that the funds released shall not exceed the state's matching share requirement as determined by either: (a) Section 81838 of the Education Code, for those districts which are able to fund their matching share requirement as determined by Section 81838, or (b) the Office of the Chancellor of the California Community Colleges, for those districts which are unable to fund their matching share requirement as determined by Section 81838 of the Education Code. The state's matching share requirement shall be determined by the district's ability to fund the major capital outlay project as determined by the Office of the Chancellor of the California Community Colleges. Provided further, that, with the exception of category (48) of Item 687-301-146, these items shall be subject to the prior approval of the State Public Works Board.

SEC. 3. There is hereby appropriated from the Capital Outlay Fund for Public Higher Education the sum of two hundred fifty thousand dollars (\$250,000) for the purpose of remodeling a science building at California Polytechnic State University, San Luis Obispo.

SEC. 4. 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 correct acutely hazardous conditions in community college facilities, to prevent further and more costly future deterioration, and to ensure the most efficient utilization of the funds allocated under this act, it is necessary that this act take effect immediately.

## CHAPTER 1372

An act to amend Sections 40, 41, 52, 92, 262.3, 1043, 1240, 1245, 1246, 1250, 1252, 1253, 1260, 1262, 1271, 1294, 1297, 1298, 1330, 1340, 1400, 1500, 1510, 1602, 1606, 1700, 1721, 1831, 1946, 4002, 4003, 7000, 8006, 8008, 8070, 8080, 8081, 8084, 8092, 8207, 8225, 8285.5, 8320, 8322, 8328, 8329, 8362, 8394, 8510, 8534, 8760, 8761, 8762, 8763, 8764, 8765, 8771, 10407, 10504, 10900, 10901, 10907, 10910, 10912, 10913, 10914, 11001, 12020, 12220, 12302, 12400, 12401, 12402, 12405, 14000, 15100, 15106, 15140, 15141, 15142, 15147, 15252, 15254, 15502, 15520, 15527, 15528, 15541, 15551, 15570, 15574, 15701, 15718, 15735, 15745, 15752, 15794, 16042, 16045, 16080, 16100, 16105, 16165, 16195, 16197, 16200, 16214, 17302, 17313, 17900, 17901, 17902, 17903, 18100, 18101, 18102, 18103, 18110, 18111, 18120, 18121, 18122, 18131, 18132, 18134, 18137, 18138, 18139, 18170, 18171, 18172, 19901, 22200, 22504, 24806, 24923, 24924, 32033, 32300, 32371, 32372, 33031, 33113, 33117, 33117.5, 35501, 39214.5, 39308, 39383, 39830, 41303, 41332, 44849, 44850, 44854, 51875.7, 52152, 52154, 52302.3, 52342, 52512, 62001, 66010, 66011, 66017, 66021, 66700, 68011, 68012, 68016, 68022, 68023, 68040, 68041, 68051, 68070, 68071, 68072, 68073, 68100, 69510, 69511.5, 69537, 69640, 69641, 69641.5, 69642, 69643, 69648, 69648.5, 69649, 69653, 69655, 71004, 71020, 71040, 71046, 71050, 71090, 71092, 71093, 72000, 72023.5, 72027, 72031, 72102, 72122, 72241, 72247, 72423, 72500, 72506, 72530, 74000, 74001, 74104, 74105, 74106, 74107, 74109, 74110, 74132, 74134, 74135, 74136, 74139, 74140, 74153, 74154, 74155, 74158, 74159, 74202, 74270, 74290, 76000, 76001, 76020, 76403, 76407, 78031, 78032, 78211.5, 78213, 78216, 78217, 78230, 78249, 78300, 78401, 78900, 78907, 79020, 79021, 79154, 79155, 81033, 81130, 81130.5, 81133, 81160, 81177, 81179, 81805, 81807, 81820, 81822, 81836, 81837, 81901, 81908, 81947, 82321, 82537, 82542, 84030, 84040.6, 84207, 84320, 84328, 84362, 84381, 84382, 84383, 84384, 84660, 84890, and 85230 of, to amend and repeal Section 32033 of, to add Sections 8323, 71025, 71028, 72013, 72014, 72015, 72243, 72249, 72253.3, 72253.5, 72253.7, 78034, 84001, 84700.3, 85266.5, 87448, and 88020.5 to, to add Chapter 1.5 (commencing with Section 78100) to Part 48 of, to repeal Sections 91, 265, 1255, 7001, 7002, 8085, 8329.5, 8511, 8513, 8514, 8515, 8516, 12210, 12404, 14020, 14021, 15000, 32200, 44971, 66101, 66102, 66200, 66700.5, 66902.5, 67007, 68010, 68013, 68019, 68020, 68021, 68090, 69644, 69645, 69646, 69647, 69648.7, 69657, 71005, 71027.5, 71033, 71034, 71038, 71039, 71041, 71042, 71047, 71048, 71095, 71096, 71097, 72001, 72002, 72020, 72021, 72023.7, 72024, 72025, 72028, 72029, 72030, 72032, 72033, 72035, 72120, 72125, 72126, 72132, 72200, 72202, 72203, 72204, 72208, 72231, 72237, 72241.5, 72244, 72247.1, 72248, 72255, 72256, 72408, 72409, 72412, 72413, 72419, 72419.5, 72420, 72421, 72422, 72531, 72532, 74010, 74011, 74271, 74282, 74283, 74291, 74292, 74293, 74294, 74295, 76001.5, 76002, 76006, 76021, 76142, 76160, 76400, 76405, 76408, 76409, 76470, 78001, 78002, 78003, 78004, 78005, 78006, 78007, 78010, 78011, 78012, 78220, 78221, 78222, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78250, 78270, 78272, 78301, 78302, 78303, 78304, 78305, 78402, 78403, 78405, 78407, 78409, 78412, 78440, 78440.5, 78441,

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78442, 78902, 78903, 78904, 78905, 78906, 79022, 79023, 79024, 79025, 79026, 79027, 79027.5, 79028, 79029, 79031, 79032, 79121, 79122, 79123, 79124, 79153, 81000, 81005, 81006, 81008, 81009, 81033.5, 81035, 81036, 81038, 81039, 81131, 81131.5, 81131.6, 81132, 81134, 81135, 81136, 81137, 81140, 81164, 81165, 81176, 81801, 81802, 81803, 81804, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 81900, 81903, 81906, 81910, 81911, 81912, 81913, 81914, 81915, 81916, 81917, 81918, 81919, 81920, 81921, 81922, 81923, 81924, 81931, 81948, 81953, 81954, 81957, 81958, 81959, 81967, 82305, 82305.5, 82321.1, 82360, 82362, 82363, 82364, 82365, 82530, 82531, 82532, 82533, 82535, 82536, 82538, 82539, 82540, 82541, 82543, 84004, 84005, 84031, 84035, 84040.3, 84040.7, 84041, 84043, 84044, 84045, 84046, 84200, 84201, 84206, 84300, 84322, 84324, 84325, 84327, 84329, 84330, 84331, 84332, 84360, 84363, 84380, 84384.1, 84385, 84386, 84387, 84661, 84662, 84735, 84850.5, 84891, 84892, 84893, 84894, 84895, 85210, and 85430 of, to repeal Article 2 (commencing with Section 8020) of Chapter 1 of Part 6 of, Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of, Article 3 (commencing with Section 71060) of Chapter 1 of Part 44 of, Article 3 (commencing with Section 72280) of, and Article 5 (commencing with Section 72320) of Chapter 3 of, Article 1 (commencing with Section 72600) of, Article 4 (commencing with Section 72640) of, and Article 5 (commencing with Section 72650) of, Chapter 6 of Part 45 of, Article 8 (commencing with Section 76130) of Chapter 1 of, Chapter 2 (commencing with Section 76300) of, Article 2 (commencing with Section 76420) of, and Article 4 (commencing with Section 76450) of Chapter 3 of Part 47 of, Article 2.5 (commencing with Section 78040) of, and Article 3 (commencing with Section 78050) of Chapter 1 of, Article 1 (commencing with Section 78200.5) of, and Article 6 (commencing with Section 78280) of Chapter 2 of, Article 2 (commencing with Section 78430) of, and Article 5 (commencing with Section 78460) of Chapter 3 of, Article 2 (commencing with Section 78920) of, and Article 3 (commencing with Section 78930) of Chapter 7 of, Article 1 (commencing with Section 79000) of, and Article 2 (commencing with Section 79010) of Chapter 8 of Part 48 of, Article 1 (commencing with Section 82500) of Chapter 8 of Part 49 of, Article 3 (commencing with Section 84050) of Chapter 1 of, Article 6 (commencing with Section 84370) of, and Article 8 (commencing with Section 84390) of Chapter 3 of, Article 5 (commencing with Section 84801) of Chapter 5 of, Article 1 (commencing with Section 85200) of Chapter 8 of, Article 1 (commencing with Section 85400) of Chapter 9 of, and Article 3 (commencing with Section 85420) of Chapter 9 of Part 50, to repeal Chapter 5.5 (commencing with Section 84900) of, Chapter 6 (commencing with Section 85000) of, and, Chapter 7 (commencing with Section 85100) of Part 50, to repeal and add Section 84040 of, and to repeal and add Chapter 4 (commencing with Section 84500) of Part 50 of, the Education Code, to amend Section 16417 of the Government Code, and to add Section 20660 to the Public Contract Code, relating to community colleges.

[Approved by Governor September 26, 1990. Filed with  
Secretary of State September 28, 1990.]

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature hereby finds and declares that numerous provisions of the Education Code, including those provisions listed in subdivision (b), authorizing community colleges to conduct various activities are unnecessary in light of Section 14 of Article IX of the California Constitution. Section 14 of Article IX of the California Constitution authorizes community college districts to initiate and carry out any activity which is not in conflict with, or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which community college districts are established.

(b) The Legislature finds and declares that the purpose of this act is to repeal or make inapplicable to the community colleges numerous Education Code provisions which are no longer necessary in light of the authority of Section 14 of Article IX of the Constitution. In repealing or making inapplicable these provisions, the Legislature finds and declares that under the general authority of Section 14 of Article IX, community college districts shall continue to have the authority provided in the provisions that are repealed. The Legislature specifically declares this finding with regard to, but not limited to, the following Education Code sections which are repealed or amended by this act:

Sections 8080, 8081, 8084, 8085, 8091, 8322, 8329, 8760, 8761, 8762, 8763, 8764, 10504, 12400, 12401, 12402, 12404, 12405, 18110, 18111, 18120, 18131, 18134, 32371, 32372, 72241.5, 72244, 72320, 72321, 72412, 72419, 72419.5, 72420, 72421, 72422, 76400, 76470, 78001, 78010, 78011, 78050, 78051, 78208, 78230, 78240, 78270, 78280, 78281, 78286, 78302, 78303, 78409, 78440, 79022, 79028, 79032, 79121, 81009, 81839, 81931, 81953, 81954, 81957, 82305, 82305.5, 82500, 82501, 82535, 82541, 84035, 84050, 85201, 85260.5, 85266, 85267, 85410, 85420, and 85430, the second sentence of Section 32033, the second and third sentences of Section 76403, the first sentence of Section 78442, and the second and third sentences of Section 84041.

SEC. 3. Section 40 of the Education Code is amended to read:

40. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or

- SEC. 676. Section 84387 of the Education Code is repealed.
- SEC. 677. Article 8 (commencing with Section 84390) of Chapter 3 of Part 50 of the Education Code is repealed.
- SEC. 678. Chapter 4 (commencing with Section 84500) of Part 50 of the Education Code is repealed.
- SEC. 679. Chapter 4 (commencing with Section 84500) is added to Part 50 of the Education Code, to read:

#### CHAPTER 4. ATTENDANCE

84500. Attendance shall be recorded and kept according to rules and regulations prescribed by the board of governors, subject to this chapter.

SEC. 681. Section 84660 of the Education Code is amended to read:

84660. (a) The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.

(b) The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the board of governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement

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by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.

(c) No community college district shall receive funds pursuant to this chapter unless the district expends at least ½ percent of its current operating budget for ongoing maintenance.

(d) The board of governors may, pursuant to subdivision (b), increase the percentage specified in subdivision (c).

(e) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district deferred maintenance funds.

SEC. 682. Section 84661 of the Education Code is repealed.

SEC. 683. Section 84662 of the Education Code is repealed.

SEC. 684. Section 84700.3 is added to the Education Code, to read:

84700.3. (a) The amount transferred to Section B of the State School Fund pursuant to law shall be expended for the state general apportionment, to be apportioned according to law.

(b) All moneys received by or for any community college under the jurisdiction of the Board of Governors of the California Community Colleges from any agency of the federal government, directly or indirectly, for the education of veterans, is hereby appropriated for the support of the community college in addition to other funds as may be appropriated therefor by the Legislature.

SEC. 685. Section 84735 of the Education Code is repealed.

SEC. 685.5. Article 5 (commencing with Section 84801) of Chapter 5 of Part 50 of the Education Code is repealed.

SEC. 687. Section 84850.5 of the Education Code is repealed.

SEC. 688. Section 84890 of the Education Code is amended to read:

84890. A community college district board may offer, subject to the approval of the Board of Governors of the California Community Colleges, and in accordance with rules and regulations to be adopted by the board of governors, courses under a flexible calendar.

SEC. 689. Section 84891 of the Education Code is repealed.

SEC. 690. Section 84892 of the Education Code is repealed.

SEC. 691. Section 84893 of the Education Code is repealed.

SEC. 692. Section 84894 of the Education Code is repealed.

SEC. 693. Section 84895 of the Education Code is repealed.

SEC. 694. Chapter 5.5 (commencing with Section 84900) of Part 50 of the Education Code is repealed.

SEC. 695. Chapter 6 (commencing with Section 85000) of Part 50 of the Education Code is repealed.

SEC. 696. Chapter 7 (commencing with Section 85100) of Part 50 of the Education Code is repealed.

SEC. 697. Article 1 (commencing with Section 85200) of Chapter

pursuant to this article shall immediately apportion the money by placing 50 percent to the credit of the road fund. The remaining 50 percent shall be divided between school and community college districts where the lands are located, with the division based on attendance. The portion attributable to school districts shall be placed to the credit of the county school service fund of the county. The portion attributable to community college districts shall be paid directly to the district.

SEC. 707. Section 20660 is added to the Public Contract Code, to read:

20660. Perishable food stuffs and seasonal commodities needed in the operation of cafeterias and food services may be purchased by a community college district in accordance with rules and regulations for the purchase adopted by the governing board of that district, notwithstanding any provisions of this code in conflict with the rules and regulations.

SEC. 708. (a) Prior to January 1, 1991, the Board of Governors of the California Community Colleges shall initially adopt and put into effect regulations which incorporate the text of the following Education Code provisions that have been repealed or amended by this act. The text of these sections, as they relate to community colleges, may be changed when initially adopted as regulations in accordance with the character of the California Community Colleges as a postsecondary education system, as specified in Section 70900 of the Education Code, and the responsibilities assigned to the Board of Governors of the California Community Colleges, as specified in the Education Code, including Sections 66700 and 70901. The changes shall not alter the requirements, rights, responsibilities, conditions or prescriptions contained in these statutes. Permitted initial changes include grammatical or technical changes, renumbering or reordering sections, removal of outdated terms or references to inapplicable or repealed statutory authorities, and the correction of gender references of the following sections of the Education Code:

Sections 8070, 8092, 17900, 17901, 17902, 17903, 18120, 18122, 71005, 71034, 72208, 72237, 72601, 72602, 72640, 72641, 72650, 74282, 74283, 76160, 76408, 78002, 78004, 78005, 78006, 78007, 78012, 78200.5, 78202, 78203, 78206, 78222, 78243, 78244, 78245, 78246, 78247, 78248, 78272, 78430, 78431, 78441, 78460, 78920, 79000, 79001, 81000, 81005, 81006, 81008, 81802, 81803, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 82364, 84040.3, 84040.7, 84043, 84044, 84045, 84046, 84051, 84052, 84057, 84324, 84325, 84330, 84331, 84332, 84360, 84370, 84371, 84372, 84387, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84522, 84524.5, 84526, 84527, 84530, 84570, 84571, 84572, 84801, 84810, 84891, 84892, 84893, 84894, 84895, 85000, 85003, 85020, 85021, 85022, 85023, 85024, 85200, and 85210, and the second paragraph of Section 68090 of, the second sentence of Section 78205 of, the first sentence of Section 84041 of, and subdivision (b) of Section 84890. After initial adoption of the Board of Governors regulations specified by this

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section, all subsequent changes to those regulations shall be made in accordance with Section 70901.5 of the Education Code.

(b) It is the intent of the Legislature that there be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained in the statutes. Should the board of governors fail to adopt and put into effect regulations in accordance with subdivision (a), the listed statutes shall remain operative until the effective date of the corresponding board of governors regulations.

(c) After the text of Sections 78460, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84524.5, 84526, 84527, 84530, 84570, 84571, 84801, and 84895 of the Education Code have been initially adopted as regulations, any changes to these regulations, other than purely technical changes approved by the Department of Finance, shall not become effective until the implementation of Section 84750 of the Education Code in accordance with the provisions of subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988.

(d) The Legislature hereby finds and declares that all statutes which it has directed the Board of Governors of the California Community Colleges to adopt as regulations meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication as provided in Section 70901.5 of the Education Code.

SEC. 709. Sections 13, 14, 18, 21, 27, 31, 50, 119, 120, 260, and 433 of this act shall become effective January 1, 1992.

SEC. 710. If the provisions of this bill amending Section 22200 of the Education Code and the provisions of AB 2642 amending Section 22200 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 2642 amending Section 22200 shall prevail over the provisions of this bill amending that section.

SEC. 711. If the provisions of this bill amending Section 69511.5 of the Education Code and the provisions of AB 3397 amending Section 69511.5 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 3397 amending Section 69511.5 of the Education Code shall prevail over the provisions of this bill amending that section.

SEC. 712. If the provisions of this bill amending Section 78213 of the Education Code and the provisions of AB 3707 amending Section 78213 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 3707 amending Section 78213 of the Education Code shall prevail over the provisions of this bill amending that section.

SEC. 713. The Legislature recognizes that the review of the necessity of amending or repealing appropriate sections of the Education Code, as embodied in this act, reflects the best efforts of the board of governors to implement Section 57 of Chapter 973 of the Statutes of 1988 within the time constraints afforded. The Legislature also recognizes that additional review will permit greater input of interested parties, securing of appropriate expertise in those technical areas which were not addressed in this act, and further refinement of the governance structure identified in Chapter 973.

Accordingly, the Board of Governors of the California Community Colleges shall continue its review of the Education Code related to the administration and operation of the California Community Colleges and shall recommend to the Legislature the amendment or repeal of those provisions affected by Chapter 973 of the Statutes of 1988 which have not been accomplished in this act.

SEC. 714. 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.

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EXHIBIT 3  
COPIES OF CODE SECTIONS CITED

**§ 84660. Legislative findings; rules and regulations; allocation of funds; definition**

(a) The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.

(b) The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursu-

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ant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the board of governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.

(c) No community college district shall receive funds pursuant to this chapter unless the district expends at least  $\frac{1}{2}$  percent of its current operating budget for ongoing maintenance.

(d) The board of governors may, pursuant to subdivision (b), increase the percentage specified in subdivision (c).

(e) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district deferred maintenance funds.

(Added by Stats.1981, c. 764, p. 2970, § 1, eff. Sept. 25, 1981. Amended by Stats.1990, c. 1372 (S.B.1854), § 681.)

**§ 84661. Allocation of funds; rules and regulations; deferred maintenance and special repair defined**

The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the Board of Governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.

(Added by Stats.1981, c. 764, p. 2970, § 1, eff. Sept. 25, 1981.)

**Library References**

Words and Phrases (Perm.Ed.)

**§ 84662. Requirement for eligibility for funds by district; use of funds**

(a) No community college district shall receive funds pursuant to this chapter unless the district expends at least 1/2 percent of its current operating budget for on-going maintenance.

(b) The board of governors may, pursuant to Section 84661, increase the percentage specified in subdivision (a).

(c) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district deferred maintenance funds.

(Added by Stats.1981, c. 764, p. 2970, § 1, eff. Sept. 25, 1981.)

**Library References**

Colleges and Universities § 6(1).  
WESTLAW Topic No. 81.  
C.J.S. Colleges and Universities § 10.

**EXHIBIT 4**  
**COPIES OF TITLE 5, REGULATIONS**  
**CITED**

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57158. Chancellor's Response to Request for Approval of Plans.

(a) When analysis by the Chancellor shows that approval of the plans for a proposed locally-funded construction of a community college facility would not result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall approve the plans.

(b) When analysis by the Chancellor shows that approval of the plans would result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall respond by:

- (1) Imposing conditions for the approval of the plans; or
- (2) Finding that despite the substantial variance with space standards, the plans, as submitted, are acceptable, and responding to the district with:

(A) Cautions, and/or

(B) Appraisal of the potential consequences of this variance.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment of subsection (b) filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

## Subchapter 4. Deferred Maintenance

### § 57200. Purpose.

For the purposes of administration and implementation of the Community Colleges Facility Deferred Maintenance and Special Repair Program as required by Education Code section 84660, the provisions of this chapter shall apply.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. New chapter 4 (sections 57200-57205) filed 7-8-82; effective thirtieth day thereafter (Register 82, No. 28).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

### § 57201. General Requirements.

Each community college district applying to receive funds pursuant to this chapter shall:

(a) Prepare and submit to the Chancellor a current five-year maintenance plan. The plan shall be consistent with the district's five-year capital outlay plan, but shall not duplicate that plan. The plan shall provide for ongoing as well as deferred maintenance.

(b) Maintain a level of ongoing maintenance during the year for which funds are requested commensurate with the level of activity in prior years.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57202. Application for Funds.

Districts shall apply to the Chancellor's Office for funding for deferred maintenance in the form and manner specified by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57203. Allocation of Funds.

The Chancellor shall allocate the funds appropriated by the Legislature as soon as such funds are available, and in accordance with the project priorities established, provided that ten percent (10%) of the funds may be held for contingencies that may occur during the year. Any such funds initially held for contingencies shall be allocated prior to the end of the fiscal year.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57204. Selection of Projects.

The Chancellor shall evaluate district applications and rank projects for funding. Projects shall be ranked for funding using the following criteria, which shall be ranked equally:

(a) Health and Safety. Priority shall be given to projects necessary to meet safety requirements and to correct hazardous conditions which, if uncorrected, would result in facility closure or danger to staff and students utilizing the facility.

(b) Prevention of Further More Costly Repairs. Priority shall be given to deferred maintenance for instructional facilities necessary to prevent substantially increased maintenance or replacement costs in the future.

(c) Disruption of Programs. Priority shall be given to projects necessary to prevent disruption of instructional programs.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57205. District Match.

The Chancellor will allocate funds for only fifty percent of the costs for a deferred maintenance project. In accepting funds under this chapter, a district agrees to spend district funds necessary to complete the project.

The Chancellor may waive this requirement in whole or in part for projects for which the district demonstrates that it cannot make available fifty percent of the costs for the project from other sources.

The Chancellor shall waive this requirement only for projects with high priority for funding. Highest priority shall be given to those projects which the Chancellor determines are necessary to prevent a facility from being closed.

Where projects would otherwise be of equal rank, first priority shall be given to those projects for which the district provides matching funds.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

EXHIBIT 5  
COPY OF EXECUTIVE ORDER CITED

**Preparation Guidelines for  
Scheduled Maintenance  
and  
Hazardous Substances  
Project Funding Proposals**



*Revised December 2001*

**Chancellor's Office  
California Community Colleges  
Facilities Planning**



<p><b>Guidelines for Scheduled Maintenance and Hazardous Substances Programs</b></p>
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## Preface

The Deferred Maintenance and Special Repairs Program for the California Community Colleges was established by the Legislature effective September 25, 1981. The program title was changed to the Scheduled Maintenance and Special Repairs Program during the 1996-97 budget cycle. Program guidelines are contained in *Education Code* Section 84660, et seq.; and the *California Code of Regulations*, Title 5, Section 57200, et seq.

The program's primary objectives are to protect the state's investment in community colleges through timely nonrecurring repair and maintenance of their facilities, to correct and avoid health and safety hazards, to maintain an environment conducive to learning, and to improve long term cost effectiveness of facility operations.

Chapter 4.7 of Title 5 of the *California Code of Regulations* declares "It is in the interest of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities." It also states that "The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities."

This program assists districts in maintaining their facilities by sharing in the cost of repairing and replacing some of the more costly maintenance projects found on the 107 campuses.

Due to limited resources, community colleges have been unable to adequately maintain and repair their physical facilities. The aging of the facilities and the utility/mechanical systems that support them exacerbates this problem. Although some of the colleges were built in the early 1900's, most were built in the 1950's. Many of the newer colleges, as well as the older ones, have infrastructures that are in need of repair. This program has been instrumental in addressing substantiated maintenance and special repair projects submitted by the community colleges. It is the intent of the program to target those structures and their related infrastructures that are in the most need of repair. The districts and the state share the costs of the projects. Most recently, the match has been a 1:1 ratio.

The Chancellor's Office uses the district's annual Scheduled Maintenance Five-Year Plan to substantiate project needs and determine the dollar amounts required to meet those needs. The current Five-Year Plan identifies an accumulative need of over \$610 million for the next 5 years. The Five-Year scheduled maintenance plan includes projects, dollar amounts, and time frames for preventive as well as scheduled maintenance projects anticipated by each community college district.

In addition, districts submit individual project proposals identifying the scope and justification for each project. For fiscal year 1999-2000 over 1,200 scheduled maintenance projects valued at over \$210 million are identified in the individual project

proposals. With the funds in this on-going program the state is able to address \$78 million in projects for 1999-00. Some of the more common types of problems that tend to plague the colleges are, in priority order: roof, mechanical, and utility repairs/replacement; infrastructure/land erosion control; replacement of doors, windows, floors, ceiling and hardware; exterior/interior refurbishing; and resurfacing of tennis courts, swimming pools, walkways, running tracks and roadways.

State funds have gone far in reducing the number of more serious maintenance and repair projects. However, given the magnitude of the costs and the extent of repairs needed, these moneys have been insufficient to fund all the major projects, let alone the lower priority projects. Needs continually arise as wear and tear and the passing of time necessitate additional maintenance.

This program has been recognized by the districts as highly effective and efficient in helping them meet their most critical scheduled maintenance needs. It eliminates the identified health and safety problems and avoids greater future costs resulting from compounded damage to each college's facilities and infrastructure.

## **Instructions for Preparation of Scheduled Maintenance and Special Repairs Project Funding Proposals for Consideration of State Funding**

*Reference: Education Code, Chapter 4.7, Sections 84660-84662  
Title 5, Subchapter 4, Sections 57200-57205*

### **Explanation of the Scheduled Maintenance Project Funding Proposal (PFPs)**

A Scheduled Maintenance Project Funding Proposal (241/SM/GUIDE) is used for proposing local assistance funds to be included in the state program's budget for that project. It is a statement of that project's intent, scope, justification, estimated cost and timing. If funded the proposal becomes an integral part of the grant agreement and all budgetary issues reference it.

The proposal(s) are due December 1<sup>st</sup> of each year. *Education Code* Section 84660 requires that a five-year scheduled maintenance plan that "shall include plans for preventative as well as deferred maintenance" be submitted at the same time as the proposals. Additionally, this section of the *Education Code* requires that districts shall provide for a matching contribution by the district that may be waived by the Board of Governors for financial hardship.

Acceptance of the PFP for funding consideration by the Chancellor's Office shows that the proposal has met certain criteria for state support. The amount of state support is determined by the PFP budget detail. It is possible that because of uncertain conditions for financing community college scheduled maintenance and special repairs projects, not all projects, which would otherwise qualify for state support, will be recommended for inclusion in that budget. In this event, it is probable that first consideration will be given to projects (in each state priority category type, i.e. roof, mechanical, etc.), which fulfill the greatest instructional needs.

The proposed project is presumed to be well founded by having been analyzed and justified by the district for its position in the Five-Year Scheduled Maintenance Plan. The PFP should be the basis for:

1. Consideration of the project on the basis of realistic corrective procedures to eliminate the project's need;
2. An evaluation of the need by the district and state levels for prioritizing purposes; and
3. Agreement to the project's intent and scope; and

4. The district has developed an accurate cost estimate that will remain viable during the 6-9 month approval process.

Proposals for projects under \$10,000 or over \$400,000 will not be considered for evaluation. Proposals may be made for portions or phases of a project where the total is over \$400,000 but the currently planned phase is to be less. Projects under \$10,000 may be combined with other similar projects as one project proposal.

All proposals will be budgeted at the Construction Cost Index (CCI) established for that year by the Department of Finance REEL Unit. Contact the Chancellor's Office Facilities Planning Unit if the CCI is unknown.

In order to be eligible for funding in the Scheduled Maintenance and Special Repair Program, the district must have submitted a current year district Scheduled Maintenance Five-Year Plan (241SM5Y), due on December 1<sup>st</sup> of each year. Projects not contained in the Five-Year Plan will not be eligible unless an amended Five-Year Plan is also submitted.

Each proposal for a project should be given a separate local district priority number (1, 2, 3, etc.). The district should make the priority determination for each of its proposals and not list them as all top priority or the same priority number. The Chancellor's Office gives some weighting to the district's prioritization in the approval process.

The Scheduled Maintenance Project Funding Proposal must have district certification by the Chief Executive Officer or other authorized signature.

Incomplete or obviously incorrect recording of data may result in non-approval of the entire Scheduled Maintenance Project Funding Proposal.

The state reserves the right to amend line item costs that exceed line item amount maximums as shown on the Project Funding Proposal form.

Remember, all Scheduled Maintenance Project Funding Proposals and the district's Scheduled Maintenance Program Five-Year Plan must be in the Chancellor's Office on or before December 1<sup>st</sup>, to be considered for the upcoming year's program.

## **Scheduled Maintenance and Special Repairs Program**

The following instructions are intended for districts that wish to participate in the state-assisted Scheduled Maintenance and Special Repairs Program assuming availability of funds. The program regulations are contained in *Education Code* Sections 84660-84662 and Title 5 Sections 57200-57205. The state's evaluation criteria are used to prioritize the district's scheduled maintenance project requests for this local assistance program. The evaluation criteria have been developed with a systematic approach to solving the most critical statewide maintenance issues. These would not necessarily parallel all districts' needs or wants.

The Scheduled Maintenance Program has a legislatively mandated *Maintenance of Effort* (MOE) requirement. Districts must certify as a condition of receiving these funds, it shall increase its operations and maintenance spending from the 1995-96 level by the amount of the allocation plus an amount to be provided from district discretionary funds equivalent to \$1 for each \$1 of state funds.

It is the Chancellor's Office view that expenditures for "Operation and Maintenance of Plant" (Activity 6500) and a portion of the "Physical Property and Related Acquisitions" (Activity 7100) can be considered as components of the compliance test requirements. The maintenance of effort requirement applies to Activity 6500 for routine operation and maintenance of the plant in the general fund. The portions of the 7100 activities that are allowable for inclusion in the compliance calculations are any Scheduled Maintenance and Special Repair items as defined in EC§ 84660 for unusual, and nonrecurring work to restore a facility to a safe and useable condition. The amount allowed is without regard to fund or funding source, including those projects funded with district money.

For the fiscal year 1999-2000, the compliance "target" amount would equal the 1995-96 expenditure level for Activity 6500 (established in the 1998-99 annual audit) plus an amount equal to the state's contribution and the district's match for Scheduled Maintenance and Special Repairs projects expended in that fiscal year. To be in compliance a district will have to have spent, in the 1999-2000 fiscal year, an amount equivalent to or greater than the "target" amount.

As an example, let's say it has been determined that a district spent \$1,000,000 in 1995-96 for "operations and maintenance" (Activity 6500) and that they were reimbursed in 1999-2000 for \$200,000 in Scheduled Maintenance Grant Agreement funds. In order to be in compliance with their certification, at the end of the 1999-2000 fiscal year the district will need to have expended at least \$1,400,000, including \$200,000 for the district share if their agreement required a 50% match. The attached worksheet illustrates this example and provides space for the district to estimate their compliance status.

The forms as well as these guidelines are available on the Chancellor's Office homepage in the Facilities Planning Section.

The homepage is [www.cccco.edu/cccco/facility/index.htm](http://www.cccco.edu/cccco/facility/index.htm).

## I. General Instructions

For the purpose of this program "scheduled maintenance and special repair," means unusual, non-recurring work to restore a facility to a safe and continually usable condition for which it was intended. The format for submission of each Scheduled Maintenance Program project by a district is the Project Funding Proposal form (241/sm/PFP) and must contain the following information:

A **Project Funding Proposal** should contain data that will readily identify the district, college, or center project, and the assigned district priority number should be indicated. If the proposal should impact specific building(s), then the district should identify the buildings using the Space Inventory number assigned to that building. Projects that are identified as being "campus-wide" shall list the buildings that will be impacted by the repairs. If the campus-wide project is an infrastructure type, then the area of the campus that will be impacted should be identified. The appropriate district representative should also sign it; the proposal should list a contact person and accompany the additional elements of the planning submittal.

A **Scheduled Maintenance Proposed Project Intent and Scope** should clearly identify what programs are affected, describe the maintenance problem, preventive measures taken, adverse affects if not corrected and corrective measures needed to remedy the situation. Districts are urged to complete this section thoroughly and include all relevant elements as outlined in the sample copy in order to illustrate their need. Be sure to include age and size of building when necessary. If you do not have sufficient space for this information please attach additional pages as needed.

**Project Category** clearly identifies project type; facility type(s) involved, how long the problem existed, and the adverse effect if uncorrected. Districts should try to limit their adverse effect choice to one or two selections. If a safety hazard is chosen as the adverse effect, then it should be documented or the choice will be ignored. An independent third party inspection or citations by the fire marshal, county health inspector, and other state control agencies are all valid support documents for safety hazard selections.

On proposals that impact multiple areas, care should be given not to include facilities that are not state supportable. The Scheduled Maintenance and Special Repairs Program uses the same categorization criteria as capital outlay. Title 5, Section 57001.5(d) prevents funding dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single purpose auditoriums. Projects that contain one or more of these facilities may go unfunded.

**Budget Summary – Supporting Data** should supplement elements of the project cost estimate giving a breakdown of costs relative to the project. Construction management costs are allowable on larger projects. Their costs must be included in the "Permits and Fees" budget summary line item; this line item has a 11% of "Construction Cost" maximum allowable amount. Allowable

expenditures for Architects, Engineering, Permit Fees, Plan Check Fees, and Construction Management all must live within the 11% of Construction Cost limitation.

District staff may be used for completion of projects, however the state will not allow supplanting of district payroll costs as an acceptable expense against this program. Force Labor above and beyond the normal workday is acceptable. In other words, if a district wants their staff to perform these tasks on overtime or weekends, then the cost is allowable. If the district schedules the work during business hours and the staff is diverted from their normal maintenance functions, then the costs are not allowable.

Costs represented on the proposal should be as accurate as possible as the funding of the proposal will be based on these figures. Once a proposal is approved and funded through the grant process the proposal becomes an integral part of the grant agreement. No additional funds are available should original cost estimates be inaccurate. District will be responsible for any cost overruns, unless prior written approval for amendments to the agreement is received from the program monitor.

## II. Grant Process

The Chancellor's Office shall review the proposals and Five-Year Scheduled Maintenance Plans after December 1<sup>st</sup>. This data will be used in discussion with the Department of Finance to determine the necessary program funding level for the next fiscal year. Based on the results of this funding level, a statewide-prioritized list will be developed.

Districts will receive notification of the results of this list. The notice will identify projects that are proposed for funding. Districts are requested to review the preliminary list of projects to ensure that the scope, costs and projected match requirements are still feasible. If a district needs to revise a proposal at this time, a written request must be sent to the Chancellor's Office Facilities Planning Unit identifying what changes is necessary and what caused these changes to occur.

Once the Governor's Budget is signed and the final statewide funding level is determined, the Notice of Certification will be sent to the districts. The Notice of Certification will contain the final funding array of projects proposed for funding and a statement of certification that commits the district to completing the projects listed in the time allowed by the grant agreement and at the funded level identified. If the district cannot meet the financial commitment because of a financial hardship, then a match waiver request may be submitted.

The match waiver criteria are explained in attachment smwaiver.doc. Please review the criteria and contact the scheduled maintenance program monitor for further information if necessary.

The Board of Governor's must approve all grant agreements in excess of \$100,000. Once the grant agreements are approved, the five (5) original copies of the agreements will be sent to the districts for their signature. On signing and returning four (4) original copies of the grant, the grants shall be in force.

Project expenditures incurred prior to the effective date of the grant agreement will not be reimbursed.

### III. Grant Management

It seems like an obvious statement, but district staff responsible for implementation of the agreement should read the grant agreement to familiarize themselves with any changes that may have occurred to the language of the agreement since the previous year. It is their responsibility to make sure the district performs according to the agreement. It is not acceptable to say, "it does not apply because I was not aware of that" or "it was not in last year's agreement."

The grants are a one-year appropriation and have a total of three years to expend beginning with the effective date of the grant agreement.

The final year claims must be submitted by May 15<sup>th</sup> of the fourth year, in order to give the Chancellor's Office and the State Controller's Office sufficient time to process the claim. Please refer to the *Guidelines for Reimbursement of Local Assistance and Capital Outlay Claims* booklet for more information on claims and claims processing. The booklet is available from the Chancellor's Office Facilities Planning Unit.

The individual project proposals are the working part of the grant. Their scope, intent, and budgets are what the district and the state have agreed to complete. The cover page of the grant agreement will contain a summary of the projects included in the grant agreement. If there is any question on a project, the proposal form will take precedence over all other documents.

Frequently districts will find that the budgeted amount will either be in excess of what the awarded bid will cost or will be insufficient to cover the lowest bid. If the proposal amount is greater than the bid amount, the district may award the bid and at a later date request use of the difference for an alternative project. If the bid is greater than the amount of the proposal, the district should notify the program monitor of the situation. The district will need to supply information on why the bid is greater than the initial cost estimate and how the district plans on meeting the shortfall of funding while addressing the scope of the proposal. This should take place **prior** to the issuing of the contract.

Down scoping, use of savings from other projects or funding a phase of the project with savings from different year scheduled maintenance grants, or greater local contribution are all viable solutions. However, they must be approved in writing prior to the issuing of the contract.

The program monitor may allow for the elimination of a project from the grant agreement if certain circumstances are prevalent. Typically, the situations are an emergency repair where the campus or a portion of the campus will be shut down unless emergency repairs are completed. The district shall make every effort to notify the program monitor as soon as possible of the need to substitute an emergency project in place of an existing project. Prior to issuing a contract the district will need written permission from the program monitor. If the cause of the substitution was an emergency repair than the substituted project may be re-submitted with the next fiscal year's scheduled maintenance program proposals.

Districts with projects in excess of \$100,000 shall forward a copy of the bid package or the detailed plans of the project to the Chancellor's Office for plan checking. The plan check must be done prior to the commencement of work to ensure the scope and intent of the original proposal is met. The itemized budget in the grant agreement allows for budgeting of plan check fees. The review of the bid package and/or the detailed plans of the project are an allowable expenditure.

Claims shall be submitted to the Chancellor's Office on a monthly basis for work completed or in progress. Claims shall not be submitted for less than \$1,000 (unless it is the final claim). It is allowable and encouraged to combine several projects' invoices into one claim as long as the details of the expenditure summary sheet clearly identifies what was done on each project and for how much.

As stated previously, the project proposal contains the budget detail that is in enforce in the agreement, the state will not reimburse beyond the amount of the project total without prior provisions having been made. Should a district claim more than the project total the claim shall be returned with a request for explanation.

The detailed itemized records for the direct expenses must accompany claims containing district staff hourly charges. These records should show the work was performed beyond the normal work period of the staff. Claims will not be processed without the records.



## Evaluation Criteria

The following is the evaluation criteria used for developing the priority standing for the Scheduled Maintenance and Special Repairs program.

1. Type of project (*listed in order of state priority*)
  - a. Roofs
  - b. Utilities
  - c. Mechanical
  - d. Exterior
  - e. All others that do not fit in the above types
2. Severity of the problem – it is presumed that all projects are considered critical at the district level or they will not be listed for the coming fiscal year. (Relationship to potential facility closure or health and safety violation.)
3. Types of facilities, which have maintenance problems are prioritized as follows:
  - a. Instructional Classrooms and Laboratories;
  - b. Libraries;
  - c. Faculty and Administrative Offices;
  - d. Cafeterias;
  - e. Theaters and Physical Education Facilities;
  - f. Site Development;
  - g. Warehousing and Maintenance Facilities.
4. Age of the problem in relation to age of facility.
5. Existence of an ongoing district maintenance program, specifically a preventive maintenance program.
6. Level of district maintenance commitment as a percentage of the total annual Operating Budget (Activity Account 6500) and the district's ability to provide matching funds.
7. Other factors as appropriate to the particular scheduled maintenance and special repair problems within the listed categories.
8. Inclusion of project in district's Scheduled Maintenance Program Five-Year Plan. A revised five-year plan may be necessary for emergency projects.
9. Projects for those facilities, which would not be state-supported under the Community College Construction Act, will not be considered in the Scheduled Maintenance Program (such as parking lots, stadiums, bookstores, and dormitories).
10. Projects that contain both maintenance aspects and capital outlay features are to be prorated and will be considered on an individual basis. Such costs of any items of work included within a project, which are in addition to recognized scheduled maintenance work, must be borne by the district. For example, if an uninsulated roof is being replaced with roofing and insulation, the entire cost of the insulation must be borne by the district. This type of project may affect its consideration in prioritizing in the state program.







## Schedule Maintenance Program

### Criteria for Evaluating Waiver of District Match

The following criteria will be used for evaluating district requests for more than the established state share on their funded Scheduled Maintenance Program projects:

1. The unrestricted General Fund ending balance on the final financial statement (311) of the preceding fiscal year for which they are requesting the waiver, as established by the Chancellor's Office for district ability, will be used as a base.
2. If the net result of the above mentioned step is less than 5% of the total unrestricted General Fund expenditures, the district may qualify for up to 90% state funding for its approved Scheduled Maintenance projects of that year.
3. If the net result is equal to or larger than 5%, but the amount of funds needed for matching that year's Scheduled Maintenance Program projects brings the unrestricted ending balance below 5%, the district may qualify for up to 90% state funding.
4. If the net result is larger than 5%, the district will be required to use those funds to match its approved Scheduled Maintenance projects at the established match. However, if there are not sufficient funds for the established match, but there are sufficient funds to cover more than 10% of the project, the district may apply those funds as matching. District matching will be no less than 10% and not more than 50% of the total project cost.
5. State funds for the approved Scheduled Maintenance projects are limited to the amount allocated by the Legislature for that fiscal year. The projects are initially allocated on an established matching share (i.e. 50%). Therefore, any district eligible for more than the established state match will receive approximately the same amount of state funds as they would have received if they had matched at the established rate. This may require some projects to be deferred until successive fiscal years. Exceptions may be made for districts with only one approved project in the Scheduled Maintenance Program for that year.

Chancellor's Office  
California Community Colleges

2002-03 Scheduled Maintenance Project Funding Proposal

District: Metropolitan Community College District District Priority No.: 1  
 College: Midtown City College  
 Project Title: HVAC Replacement - Building A

**Briefly Describe the Proposed Project's Intent and Scope**  
*This project, as identified in our district's scheduled maintenance five-year plan, has reached a point where routine Maintenance is no longer effective. Replacement parts are unavailable since this system is now obsolete. The Project would replace the old unit with a unit designed to meet the building's needs.*

**Program Discipline(s) or Activity(ies) Affected:**  
Math, Science, and English

**Check One Box Only for Each Category**

Project Type:	Roof <input type="checkbox"/>	Utilities <input type="checkbox"/>	Mechanical <input checked="" type="checkbox"/>	Exterior <input type="checkbox"/>	Other <input type="checkbox"/>
Facility Type(s) Involved:			Classroom/Laboratory <input checked="" type="checkbox"/>	Library/LRC <input type="checkbox"/>	
Faculty/Administration Offices	<input type="checkbox"/>		Physical Education <input type="checkbox"/>	Support Services <input type="checkbox"/>	
Theater/Performing Arts	<input type="checkbox"/>		Warehouse/Maintenance <input type="checkbox"/>	Child Care <input type="checkbox"/>	
Campuswide	<input type="checkbox"/>		Other: _____ <input type="checkbox"/>	Cafeteria <input type="checkbox"/>	
How Long Has Problem Existed?	0 yrs. <input type="checkbox"/>	6 mo.-1 yr. <input type="checkbox"/>	1-2 yrs. <input checked="" type="checkbox"/>	2-5 yrs. <input type="checkbox"/>	Always <input type="checkbox"/>
Adverse Immediate Effect(s) if Uncorrected:				Campus/Facility Closure <input type="checkbox"/>	
Safety Hazard <input type="checkbox"/>		Code Violation <input type="checkbox"/>		Greater Future Damage/Costs <input type="checkbox"/>	
Inconvenience <input type="checkbox"/>		Disruption of Program(s) <input checked="" type="checkbox"/>		Potential/Future Damage/Costs <input type="checkbox"/>	
Corrective Method:	Repair/Refinish Existing <input type="checkbox"/>		Replace w/comparable Unit <input checked="" type="checkbox"/>	Upgrade <input type="checkbox"/>	

**Budget Summary**

1. Permits and Fees (Architect/Engineer, Plan Check Fees, Misc.-11% max.)	\$ 4,400.00
2. Construction Costs (@ CCI 3847)	\$ 40,000.00
3. Inspection	\$ 1,800.00
4. Contingency (7% maximum)	\$ 2,800.00
5. Total Project (Sum of items 1 through 4)	\$ 49,000.00

I hereby certify that if this project is approved for funding from the 2002-03 Budget Act, that the district will be able to provide the match requirement and it is the district's intent to award a contract during the 2002-03 fiscal year.

**District Certification**

Business Manager: <u>Big Boss</u>	Return to: California Community Colleges Facilities Planning Unit 1102 Q Street, 4 <sup>th</sup> Floor Sacramento, CA 95814
Project Director: <u>Lotsa Work</u>	
Telephone Number: <u>( 123 ) 456-7890</u>	

Submit by Mid December

**Scheduled Maintenance Five-Year Plan**

Your \_\_\_\_\_  
 \_\_\_\_\_  
 Community College District  
 \_\_\_\_\_  
 X  
 District Certification (Signature)

Your \_\_\_\_\_  
 College Campus

**List of Critical Needs by Category**

Roof Repair or Replacement (1999-00 through 2003-04)

Fiscal year of Funding* (1)	Type/Use of Building (2)	Age of Building (3)	Age of Roof (4)	Square Feet of Roof (5)	(ENR 5819) Estimated Repair/Replacement Cost (6)	State or Local Funds (7)
1999-00	Classroom	31	15	15,000	70,000	State
"	Classroom	20	20	8,500	35,000	"
"	Bookstore	15	15	5,000	25,000	Local
2000-01	Office	20	10	10,000	\$130,000	State
"	Gym	10	10	18,500	40,000	"
2001-2002	Classroom	12	12	7,000	100,000	State
2002-2003	Classroom	25	10	9,700	\$140,000	State
2003-2004	Administration	30	12	12,500	30,000	State
					50,000	State
					70,000	State

- Report five fiscal years of needs and total for each fiscal year.



**Guidelines for  
Hazardous Substances Programs**



## Preface

The environmental health hazards produced by asbestos, polychlorinated biphenyl (PCB), lead, radon, toxic chemicals, and underground tanks have become increasingly severe in recent years. It is now apparent to the Chancellor's Office that these hazards on community college campuses have reached such proportions that immediate attention must be given to addressing the problems. As the scientific field increases its knowledge on the impact of hazardous substances on the human being, the code requirements for the control and abatement of hazardous substances also increases. The community college system faces an ever-increasing demand to address these needs.

The problem is multifaceted in nature. First, those who work and study on our campuses are realistically threatened by the possibility of physical harm as a result of being exposed to these environmental hazards. Second, community colleges operate with fear that at any time a lawsuit may be filed against them because they have not removed the hazardous materials and, correspondingly, provided a safe place in which to work or study. Third, since community college districts are already experiencing serious difficulties in meeting their basic financial operating obligations, it is extremely unlikely that they will be able to save enough money from their normal state apportionment to remove or control these hazardous situations. This has manifested itself at the college level and as a consequence, students and staff have suffered health related problems and have sought (and won) legal remedies against the districts.

The state has supplied funding for Hazardous Substance Abatement every year since 1985. Yet the backlog of unfunded projects continues to grow. As the scientific knowledge on the impact of various chemical and environmental elements increases, so does the challenge to insure adequate protection for student and staff. What were acceptable practices 5-10 years ago, are now considered hazardous and must be corrected or abated.

This program would assist in the control of environmental hazards such as asbestos materials, polychlorinated biphenyl (PCB), lead, chemical removal, radon, and underground tanks and their contents, which pose an immediate danger to human health and safety at California community college facilities.



# Instructions for Preparation of Hazardous Substances Project Funding Proposals for Consideration of State Funding

*Reference: Education Code Sections 81800-81839  
California Code of Regulations, Title 5, Sections 57200-57205  
Environmental Protection Agency Guidelines (EPA), and Title 23*

## **Explanation of the Hazardous Substances Project Funding Proposal (PFPs)**

A Hazardous Substances Project Funding Proposal (241/HS/PFP) is used for requesting financial support from local assistance funds in the state program's budget for that project. The form contains a statement of that project's intent, scope, justification, project type, facility type involved, and budget summary (estimated cost and timing). If funded the proposal becomes an integral part of the grant agreement and all budgetary issues reference it.

The proposal(s) are due January 30<sup>th</sup> of each year. Acceptance of the PFP for funding consideration by the Chancellor's Office shows that the proposal has met certain criteria for state support. The amount of state support is determined by the PFP budget detail. It is possible that because of uncertain conditions for financing community college hazardous substances projects, not all projects, which would otherwise qualify for state support, will be recommended for inclusion in that budget. In this event, first consideration will be given to projects (in each state program project type, i.e. asbestos airborne particulates, non-friable asbestos, etc.) that fulfill the greatest instructional needs.

The proposed project is presumed to be well founded by having been analyzed and justified by the district including an accurate description of project scope. The PFP should be the basis for:

1. Consideration of the project on the method or methods of corrective action that is the most efficient long-term solution.
2. An evaluation of the need by the district and state levels for prioritizing purposes; and
3. Agreement to the project's intent and scope; and
4. The district has developed an accurate budget summary (estimate of cost) that will remain viable during the 6-9 month approval process.

Under this program each project that is submitted for funding consideration and becomes eligible for funding will be 100% state funded (no local matching funds required or established range of cost). Proposals for projects regardless of cost can be considered for evaluation. To improve your chance for funding we encourage the districts to combined projects under \$5,000 with other similar projects as one project proposal.

All proposals will be budgeted at the Construction Cost Index (CCI) established for that year by the Department of Finance REEL Unit. Contact the Chancellor's Office Facilities Planning Unit if the CCI is unknown.

Each proposal for a project should be given a separate local district priority number (1, 2, 3, etc.). The district should make the priority determination for each of its proposals and not list them as all top priority or the same priority number. The Chancellor's Office gives some consideration to the district's prioritization in the approval process.

The Hazardous Substances Project Funding Proposal must have district certification by the Chief Executive Officer or other authorized signature.

Incomplete or obviously incorrect recording of data may result in non-approval of the entire Hazardous Substances Project Funding Proposal.

The state reserves the right to amend budget summary (line item costs) that exceed line item amount maximums as shown on the Project Funding Proposal form.

Remember, all Hazardous Substances Project Funding Proposals must be in the Chancellor's Office on or before January 30<sup>th</sup>, to be considered for the upcoming year's program.

## Hazardous Substances Program

The following instruction are intended for districts who wish to participate in the state-assisted Hazardous Substances Program assuming availability of funds. The program regulations are contained in *Education Code* Sections 81800-81839 and *California Code of Regulations*, Title 5, Sections 57200-57205. The state's evaluation criteria are used to prioritize the district's Hazardous Substances project requests for this local assistance program. The evaluation criteria have been developed with a systematic approach to solving the most critical statewide hazardous issues. These would not necessarily parallel all districts' needs or wants.

The forms as well as these guidelines are available on the Chancellor's Office homepage in the Facilities Planning Section.

The homepage is [www.cccco.edu/cccco/fiscal/facility.htm](http://www.cccco.edu/cccco/fiscal/facility.htm)

## I. General Instructions

For the purpose of this program "Hazardous Substances" means control of environmental hazards such as asbestos materials, polychlorinated biphenyl (PCB), lead, chemical removal, radon, and underground tanks and their contents, which pose an immediate danger to human health and safety at California community college facilities. The format for submission of each Hazardous Substances Program project by a district is the Project Funding Proposal form (241/hs/PFP) and must contain the following information:

**Project Funding Proposal** should contain data that will readily identify the district, college, or center project, and the assigned district priority number should be indicated. If the proposal should impact specific building(s), then the district should identify the buildings using the Space Inventory number assigned to that building. Projects that are identified as being "campus-wide" shall list the buildings that will be impacted by the repairs. If the campus-wide project is an infrastructure type, then the area of the campus that will be impacted should be identified. The appropriate district representative should also sign it; the proposal should list a contact person and accompany the additional elements of the planning submittal.

**Hazardous Substances Proposed Project Intent and Scope** should clearly identify what programs are affected, describe the hazardous problem, means of controlling the hazardous materials, adverse affects if not corrected and corrective measures needed to remedy the situation. Districts are urged to complete this section thoroughly and include all relevant elements as outlined in the sample copy in order to illustrate their need. Be sure to include age and size of building when necessary. If you do not have sufficient space for this information please attach additional pages as needed.

**Project Category** clearly identifies project type; facility type(s) involved, how long the problem existed, and the adverse effect if uncorrected. Districts should try to limit their adverse effect choice to one or two selections. If a safety hazard is chosen as the adverse effect, then it should be documented or the choice will be ignored. An independent third party inspection or citations by the fire marshal, county health inspector, and other state control agencies are all valid support documents for safety hazard selections.

On proposals that impact multiple areas, care should be given not to include facilities that are not state supportable. The Hazardous Substances Program uses the same categorization criteria as capital outlay. The *California Code of Regulations*, Title 5, Section 57001.5(d) prevents funding dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single purpose auditoriums. Projects that contain one or more of these facilities may go unfunded.

**Budget Summary — Supporting Data** should supplement elements of the project cost estimate giving a breakdown of costs relative to the project. Construction management costs are allowable on larger projects. Their costs

must be included in the "Permits and Fees" budget summary line item; this line item has a 11% of "Construction Cost" maximum allowable amount. Allowable expenditures for Architects, Engineering, Permit Fees, Plan Check Fees, and Construction Management all must live within the 11% of Construction Cost limitation.

District staff may be used for completion of projects, however the state will not allow supplanting of district payroll costs as an acceptable expense against this program. Force Labor above and beyond the normal workday is acceptable. In other words, if a district wants their staff to perform these tasks on overtime or weekends, then the cost is allowable. If the district schedules the work during business hours and the staff is diverted from their normal maintenance functions, then the costs are not allowable. Additionally, employees who are hired on a temporary basis to perform tasks from the beginning to the completion of a project are considered an allowable expense as well. All force labor expenses must be accompanied by time reports in order to be reimbursed by the state.

Costs represented on the proposal should be as accurate as possible as the funding of the proposal will be based on these figures. Once a proposal is approved and funded through the grant process the proposal becomes an integral part of the grant agreement. No additional funds are available should original cost estimates be inaccurate. District will be responsible for any cost overruns, unless prior written approval for amendments to the agreement is received from the program monitor.

## II. Grant Process

The Chancellor's Office shall review the proposals after January 30<sup>th</sup>. This data will be used in discussion with the Department of Finance to determine the necessary program funding level for the next fiscal year. Based on the results of this funding level, a statewide-prioritized list will be developed.

Districts will receive notification of the results of this list. The notice will identify projects that are proposed for funding. Districts are requested to review the preliminary list of projects to ensure that the scope, costs and projected match requirements are still feasible. If a district needs to revise a proposal at this time, a written request must be sent to the Chancellor's Office Facilities Planning Unit identifying what changes are necessary and what caused these changes to occur.

Once the Governor's Budget is signed and the final statewide funding level is determined, a list of funded projects will be sent to the districts. Please review the list and contact the Hazardous Substances program monitor for further information if necessary.

The Board of Governor's must approve all grant agreements in excess of \$100,000. Once the grant agreements are approved, the five (5) original copies of

the agreements will be sent to the districts for their signature. On signing and returning four (4) original copies of the grant, the grants shall be in force.

Project expenditures incurred prior to the effective date of the grant agreement will not be reimbursed.

### III. Grant Management

It seems like an obvious statement, but district staff responsible for implementation of the agreement should read the grant agreement to familiarize themselves with any changes that may have occurred to the language of the agreement since the previous year. It is their responsibility to make sure the district performs according to the agreement. It is not acceptable to say, "it does not apply because I was not aware of that" or "it was not in last year's agreement".

The grants are a one-year appropriation and have a total of three years to expend beginning with the effective date of the grant agreement.

The final year claims must be submitted by May 15<sup>th</sup> of the fourth year, in order to give the Chancellor's Office and the State Controller's Office sufficient time to process the claim. Please refer to the *Guidelines for Reimbursement of Local Assistance and Capital Outlay Claims* booklet for more information on claims and claims processing. The booklet is available from the Chancellor's Office Facilities Planning Unit.

The individual project proposals are the working part of the grant. Their scope, intent, and budgets are what the district and the state have agreed to complete. The cover page of the grant agreement will contain a summary of the projects included in the grant agreement. If there is any question on a project, the proposal form will take precedence over all other documents.

Frequently districts will find that the budgeted amount will either be in excess of what the awarded bid will cost or will be insufficient to cover the lowest bid. If the proposal amount is greater than the bid amount, the district may award the bid and at a later date request use of the difference for an alternative project. If the bid is greater than the amount of the proposal, the district should notify the program monitor of the situation. The district will need to supply information on why the bid is greater than the initial cost estimate and how the district plans on meeting the shortfall of funding while addressing the scope of the proposal. This should take place **prior** to the issuing of the contract.

Down scoping, use of savings from other projects or funding a phase of the project with savings from different year Hazardous Substances grants, or greater local contribution are all viable solutions. However, they must be approved **prior** to the issuing of the contract.

The program monitor may allow for the elimination of a project from the grant agreement if certain circumstances are prevalent. Typically, the situations are an

emergency repair where the campus or a portion of the campus will be shut down unless emergency repairs are completed. The district shall make every effort to notify the program monitor as soon as possible of the need to substitute an emergency project in place of an existing project. Prior to issuing a contract the district will need written permission from the program monitor. If the cause of the substitution was an emergency repair than the substituted project may be re-submitted with the next fiscal year's Hazardous Substances program proposals.

Districts with projects in excess of \$100,000 shall forward a copy of the bid package or the detailed plans of the project to the Chancellor's Office for plan checking. The plan check must be done prior to the commencement of work to ensure the scope and intent of the original proposal is met. The itemized budget in the grant agreement allows for budgeting of plan check fees. The review of the bid package and/or the detailed plans of the project are an allowable expenditure.

Claims shall be submitted to the Chancellor's Office on a monthly basis for work completed or in progress. Claims shall not be submitted for less than \$1,000 (unless it is the final claim). It is allowable and encouraged to combine several projects' invoices into one claim as long as the details of the expenditure summary sheet clearly identifies what was done on each project and for how much.

As stated previously, the project proposal contains the budget detail that is enforce in the agreement, the state will not reimburse beyond the amount of the project total without prior provisions having been made. Should a district claim more than the project total the claim shall be returned with a request for explanation.

The detailed itemized records for the direct expenses must accompany claims containing district staff hourly charges. These records should show the work was performed beyond the normal work period of the staff. Claims will not be processed without the records.

## Evaluation Criteria

The following is the evaluation criteria used for developing the priority standing for the Hazardous Substances program.

1. Type of project (*listed in order of state priority*)
  - a. Asbestos Airborne Particulates
  - b. Non-Friable Asbestos
  - c. Chemical Related
  - d. Polychlorinated Biphenyl (PCBs)
  - e. Underground Tanks and Other Related Project.
  - f. All others that do not fit in the above types
2. Severity of the problem – it is presumed that all projects are considered critical at the district level or they will not be listed for the coming fiscal year. (Relationship to potential facility closure or health and safety violation.)
3. Types of facilities that have maintenance problems are prioritized as follows:
  - a. Instructional Classrooms, Laboratories and Libraries/LRC;
  - b. Child Care Centers and Physical Education Facilities
  - c. Faculty, Administrative Offices and Support Services Facilities
  - d. Cafeterias and Theaters Facilities
  - e. Site Development;
  - f. Warehousing and Maintenance Facilities
  - g. Campus wide and Other Facilities
4. Age of the problem in relation to age of facility
5. Adverse immediate effect(s) if uncorrected
  - a. Campus/Facility Closure
  - b. Safety Hazard
  - c. Disruption of Programs(s)
  - d. Code Violation
  - e. Greater Future Damage/Costs
  - f. Inconvenience
  - g. Potential/Future Damage Costs
6. Corrective method – Removal, Replace, Retrofit, Disposal and Encapsulate/Abandon problem materials
7. Other factors as appropriate to the particular Hazardous Substances problems within the listed categories.
8. Projects for those facilities, which would not be state-supported under the Community College Construction Act, will not be considered in the Hazardous Substances Program (such as parking lots, stadiums, bookstores, and dormitories).
9. Projects that contain both hazardous materials problems and scheduled maintenance aspects are to be pro-rated and only cost associated with the hazardous materials aspect should be represented on the proposal. Costs of any items included within a project, which are in addition to recognized Hazardous Substances work, must be borne by the district. For example, if a project is to replace asbestos laden ceiling tiles and the district wishes to install ceiling fans at the same time, then only the ceiling tile replacement costs will be considered. The district would cover the cost of the fans and their installation with local funds. This type of project may affect its consideration in prioritizing in the state program.

## Categories for Hazardous Substance Projects

- Asbestos – friable airborne – ceilings
- Asbestos – friable – general
- Asbestos – friable – insulation
- Chemical – storage or ventilation
- Underground Tanks – removal and replacement
- Storage Tanks and other ground water issues
- Ballast containing PCBs
- Switches containing PCBs
- Asbestos – walls
- Asbestos – floor tiles
- Asbestos – roofs
- Lead Paint Removal
- Chemical sweeps or on-going chemical monitoring
- Underground tank monitoring
- Asbestos – survey

*Title 5 Section 57001.5(d)* – A project shall not include the planning or construction of dormitories, student centers other than cafeterias, stadia, the improvement of sites for student or staff parking, or single-purpose auditoriums.

This is not necessarily a complete list, other items would be considered in each type on a project-by-project basis.

# Chancellor's Office California Community Colleges

2002-03 Fiscal Year  
Hazardous Substances Project Funding Proposal

College District: \_\_\_\_\_  
College (Site) Name: \_\_\_\_\_  
Project Title: \_\_\_\_\_

District Priority No.: \_\_\_\_\_  
Space Inventory Bldg. No.: \_\_\_\_\_

**Briefly Describe the Proposed Project's Intent and Scope. (A description of work required and how this project qualifies as Hazardous Substances). You may attach additional justification as necessary**

**Program Discipline(s) or Activity(ies) Affected:**

\_\_\_\_\_

**Check One Box Only for Each Category**

**Project Type:** Asbestos  Toxic/Hazardous Chemicals  Underground Tanks  PCBs

**Facility Type(s) Involved:**

Faculty/Administration Offices <input type="checkbox"/>	Classroom/Laboratory <input type="checkbox"/>	Library/LRC <input type="checkbox"/>
Theater/Performing Arts <input type="checkbox"/>	Physical Education <input type="checkbox"/>	Support Services <input type="checkbox"/>
Campus Wide <input type="checkbox"/>	Warehouse/Maintenance <input type="checkbox"/>	Child Care <input type="checkbox"/>
	Other: _____ <input type="checkbox"/>	Cafeteria <input type="checkbox"/>

**How Long Has Problem Existed?** 0 yrs.  6 mo.-1 yr.  1-2 yrs.  2-5 yrs.  5-10 yrs.  over 10 yrs   
Always

**Adverse Immediate Effect(s) if Uncorrected:**

Safety Hazard <input type="checkbox"/>	Code Violation <input type="checkbox"/>	Campus/Facility Closure <input type="checkbox"/>
Inconvenience <input type="checkbox"/>	Disruption of Program(s) <input type="checkbox"/>	Greater Future Damage/Costs <input type="checkbox"/>
		Potential/Future Damage/Costs <input type="checkbox"/>

**Corrective Method:** Remove  Replace  Retrofit  Disposal  Encapsulate/Abandon

*Note: Project cost which exceed \$400,000, the District should include a Cost Estimate Summary to support cost (Optional, see attached sheet)*

**Budget Summary**

- |  |                 |
|--|-----------------|
| 1. Permits and Fees (Architect/Engineer, DSA Plan Check Fees, Misc. (Up to 11% max)) | \$ _____        |
| 2. Construction Costs (@ CCI 4019)   | \$ _____        |
| 3. Inspection  | \$ _____        |
| 4. Contingency (Up to 7% max of Item 2)  | \$ _____        |
| 5. <b>Total Project Cost</b> (Sum of items 1 through 4)                              | <b>\$ _____</b> |

**District Certification**

*I hereby certify that if this project is approved for funding from the 2002-03 Budget Act, it is the district's intent to award a contract on the project during the 2002-03 fiscal year and will follow the Public Contract Code; Education Code; Government Code; California Code of Regulations (Title 5); and any other legal requirements.*

<p><b>Signature of:</b></p> <p>District Business Manager: _____</p> <p>Project Director: _____</p> <p>Contact Person Typewritten/printed signature name: _____</p> <p>Telephone Number: _____</p> <p>E-Mail Address: _____</p>	<p><b>Return to:</b> California Community Colleges Facilities Planning Unit 1102 Q Street, Fourth Floor Sacramento, CA 95814-6511 FAX: (916) 323-8245</p>
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**2002-03 Hazardous Substances Project Funding Proposal**

District: Metropolitan Community College District District  
Priority No.: 1  
College: Midtown City College  
Project Title: Asbestos Abatement — LRC Building, Bldg. 62, Phase I

**Briefly Describe the Proposed Project's Intent and Scope (You may attach additional justification as necessary)**  
The LRC building was built at a time when asbestos was used for insulation. The insulation has begun to deteriorate and poses a risk to staff and students who breathe the airborne particles. Environmental specialists recommend the immediate removal and disposal in the lobby area for the first phase. Subsequent phases will remove the asbestos in the stock areas.

**Program Discipline(s) or Activity(ies) Affected:**  
Tutorial programs, library, AV/TV services.

**Check One Box Only for Each Category**

Project Type:    Underground Tanks     PCBs     Asbestos     Toxic/Hazardous Chemicals

Facility Type(s) Involved:

Faculty/Administration Offices <input type="checkbox"/>	Classroom/Laboratory <input type="checkbox"/>	Library/LRC <input type="checkbox"/>
Theater/Performing Arts <input type="checkbox"/>	Physical Education <input type="checkbox"/>	Support Services <input type="checkbox"/>
Campus-wide <input type="checkbox"/>	Warehouse/Maintenance <input type="checkbox"/>	Child Care <input type="checkbox"/>
	Other: _____ <input type="checkbox"/>	Cafeteria <input type="checkbox"/>

How Long Has Problem Existed?    0 yrs.     6 mo.-1 yr.     1-2 yrs.     2-5 yrs.     Always

Adverse Immediate Effect(s) if Uncorrected:

Safety Hazard <input type="checkbox"/>	Code Violation <input type="checkbox"/>	Campus/Facility Closure <input type="checkbox"/>
Inconvenience <input type="checkbox"/>	Disruption of Program(s) <input type="checkbox"/>	Greater Future Damage/Costs <input type="checkbox"/>
		Potential/Future Damage/Costs <input type="checkbox"/>

Corrective Method:    Remove     Replace     Retrofit     Disposal     Encapsulate/Abandon

**Budget Summary**

1. Permits and Fees (Architect/Engineer, Plan Check Fees, Misc.-11% max.)	\$	<u>11,000.00</u>
2. Construction Costs (@ CCI 3909)	\$	<u>100,000.00</u>
3. Inspection	\$	<u>12,000.00</u>
4. Contingency (7% maximum)	\$	<u>7,000.00</u>
5. <b>Total Project</b> (Sum of items 1 through 4)	\$	<u>130,000.00</u>

I hereby certify that if this project is approved for funding from the 2002-03 Budget Act, it is the district's intent to award a contract for this project during the 2002-03 fiscal year.

**District Certification**

Business Manager: <u>Big Boss</u>	Return to: California Community Colleges Facilities Planning Unit 1102 Q Street, Fourth Floor Sacramento, CA 95814-3607
Project Director: <u>Lotsa Work</u>	
Telephone Number: <u>( 123 ) 456-7890</u>	

**Chancellor's Office  
California Community Colleges**

**2002-03 Fiscal Year  
Hazardous Substances Project Funding Proposal**

College District: Metropolitan Community College District District Priority No.: 1  
 College (Site) Name: Midtown City College Space Inventory Bldg. No.: 62  
 Project Title: Asbestos Abatement LRC Building, Phase 1

**Briefly Describe the Proposed Project's Intent and Scope. (A description of work required and how this project qualifies as Hazardous Substances). You may attach additional justification as necessary**

*The LRC building was built at a time when asbestos was used for insulation. The insulation has begun to deteriorate and poses a risk to staff and students who breathe the airborne particles. Environmental specialists recommend the immediate removal and disposal in the lobby area for the first phase. Subsequent phases will remove the asbestos in the stock area.*

**Program Discipline(s) or Activity(ies) Affected:** Library, Faculty Offices, Counseling, Public Information

*Check One Box Only for Each Category*

**Project Type:** Asbestos  Toxic/Hazardous Chemicals  Underground Tanks  PCBs

**Facility Type(s) Involved:**

Faculty/Administration Offices <input type="checkbox"/>	Classroom/Laboratory <input type="checkbox"/>	Library/LRC <input checked="" type="checkbox"/>
Theater/Performing Arts <input type="checkbox"/>	Physical Education <input type="checkbox"/>	Support Services <input type="checkbox"/>
Campus wide <input type="checkbox"/>	Warehouse/Maintenance <input type="checkbox"/>	Child Care <input type="checkbox"/>
	Other: _____ <input type="checkbox"/>	Cafeteria <input type="checkbox"/>

**How Long Has Problem Existed?** 0 yrs.  6 mo.-1 yr.  1-2 yrs.  2-5 yrs.  5-10 yrs.  over 10 yrs  **Always**

**Adverse Immediate Effect(s) if Uncorrected:**

Safety Hazard <input checked="" type="checkbox"/>	Code Violation <input checked="" type="checkbox"/>	Campus/Facility Closure <input type="checkbox"/>
Inconvenience <input type="checkbox"/>	Disruption of Program(s) <input checked="" type="checkbox"/>	Greater Future Damage/Costs <input checked="" type="checkbox"/>
		Potential/Future Damage/Costs <input type="checkbox"/>

**Corrective Method:** Remove  Replace  Retrofit  Disposal  Encapsulate/Abandon

*Note: Project cost which exceed \$400,000, the District must include a Cost Estimate Summary to support cost (see attached sheet)*

Budget Summary	
1. Permits and Fees (Architect/Engineer, DSA Plan Check Fees, Misc.(Up to 11% max)	\$ 11,000.00
2. Construction Costs (@ CCI 4019)	\$ 100,000.00
3. Inspection	\$ 12,000.00
4. Contingency (Up to 7% max of Item 2)	\$ 7,000.00
5. Total Project Cost (Sum of items 1 through 4)	\$ 130,000.00

*District Certification*

*I hereby certify that if this project is approved for funding from the 2002-03 Budget Act, it is the district's intent to award a contract on the project during the 2002-03 fiscal year and will follow the Public Contract Code; Education Code; Government Code; California Code of Regulations (Title 5); and any other legal requirements.*

**Signature of:**  
 District Business Manager: BIG BOSS  
 Project Director: Mikey Likesit  
 Contact Person Typewritten/printed signature name:  
 ME \_\_\_\_\_ Telephone Number: (007)POP-CORN \_\_\_\_\_  
 E-Mail Address:  
 WHOEVER@ELCHICO.CC.CA.US \_\_\_\_\_

**Return to:** California Community Colleges  
 Facilities Planning Unit  
 1102 Q Street, Fourth Floor  
 Sacramento, CA 95814-6511  
 FAX: (916) 323-8245

**2002-03 Hazardous Substances Cost Estimate – Supporting Expenses (Optional)**

District: \_\_\_\_\_ District Priority No.: \_\_\_\_\_  
College: \_\_\_\_\_  
Project Title: \_\_\_\_\_

**1. Permits and Fees**

A. Architect/Engineer's fee \$ \_\_\_\_\_  
B. Community College, contract  
Document check fee (@1/7 of 1%) \$ \_\_\_\_\_  
C. Other costs (Advertising, etc.) \$ \_\_\_\_\_  
**Total Permits and Fees \$ \_\_\_\_\_**

**2. Removal/Disposal**

A. (Project's Name)  
1. (Various costs breakdown) \$ \_\_\_\_\_  
2. \$ \_\_\_\_\_  
3. \$ \_\_\_\_\_  
4. \$ \_\_\_\_\_  
5. \$ \_\_\_\_\_  
6. \$ \_\_\_\_\_  
7. \$ \_\_\_\_\_  
**Total \$ \_\_\_\_\_**

3. Inspection Days @ \$ \_\_\_\_\_ \$ \_\_\_\_\_

4. Contingency Construction @ 7% maximum \$ \_\_\_\_\_

5. Total Project Costs \$ \_\_\_\_\_

**Note:** The maximum Architect/Engineering fee is 11 percent.  
The maximum Contingency allocation is 7 percent.

## Forms

The Following Forms May Be Duplicated As Needed.

Submit One Copy of Each Project Identified.

**Note:** *Original Signature Necessary for Each Form Submitted.*

**2003-04 Scheduled Maintenance Project Funding Proposal**

District: \_\_\_\_\_ District Priority No.: \_\_\_\_\_  
 College: \_\_\_\_\_ Space Inv. Bldg. #: \_\_\_\_\_  
 Project Title: \_\_\_\_\_

Briefly Describe the Proposed Project's Intent and Scope (You may attach additional justification as necessary)

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Program Discipline(s) or Activity(ies) Affected:

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**Check One Box Only for Each Category**

Project Type: Roof  Utilities  Mechanical  Exterior  Other

Facility Type(s) Involved:

Faculty/Administration Offices	<input type="checkbox"/>	Classroom/Laboratory	<input type="checkbox"/>	Library/LRC	<input type="checkbox"/>
Theater/Performing Arts	<input type="checkbox"/>	Physical Education	<input type="checkbox"/>	Support Services	<input type="checkbox"/>
Campuswide	<input type="checkbox"/>	Warehouse/Maintenance	<input type="checkbox"/>	Child Care	<input type="checkbox"/>
		Other: _____	<input type="checkbox"/>	Cafeteria	<input type="checkbox"/>

How Long Has Problem Existed? 0 yrs.  6 mo.-1 yr.  1-2 yrs.  2-5 yrs.  Always

Adverse Immediate Effect(s) if Uncorrected (justification attached):

Safety Hazard	<input type="checkbox"/>	Code Violation	<input type="checkbox"/>	Campus/Facility Closure	<input type="checkbox"/>
Inconvenience	<input type="checkbox"/>	Disruption of Program(s)	<input type="checkbox"/>	Greater Future Damage/Costs	<input type="checkbox"/>
				Potential/Future Damage/Costs	<input type="checkbox"/>

Corrective Method: Repair/Refinish Existing  Replace w/comparable Unit  Upgrade

**Budget Summary (Where Maximums Apply, % Based on Construction Costs)**

1. Permits and Fees (Architect/Engineer, Plan Check Fees, Misc.-11% max.)	\$ _____
2. Construction Costs (@ CCI 4019)	\$ _____
3. Inspection	\$ _____
4. Contingency (7% maximum)	\$ _____
5. <b>Total Project</b> (Sum of items 1 through 4)	\$ _____

I hereby certify that if this project is approved for funding from the 2003-04 Budget Act, that the district will be able to provide all match requirements and it is the district's intent to award a contract during the 2003-04 fiscal year.

**District Certification**

Business Manager: _____	Return to: California Community Colleges Facilities Planning and Utilization 1102 Q Street Sacramento, CA 95814-6511
Project Director: _____	
Telephone Number: ( ) _____	

**2003-04 Scheduled Maintenance Project Funding Proposal**

District: Metropolitan Community College District District  
 Priority No.: 1  
 College: Midtown City College Space Inv. Bldg. # 12  
 Project Title: HVAC Replacement - Building A

**Briefly Describe the Proposed Project's Intent and Scope (You may attach additional justification as necessary)**  
*This project, as identified in our district's scheduled maintenance five-year plan, has reached a point where routine maintenance is no longer effective. Replacement parts are unavailable since this system is now obsolete. The project would replace the old unit with a unit designed to meet the building's needs.*

**Program Discipline(s) or Activity(ies) Affected:**

Math, Science, and English

**Check One Box Only for Each Category**

Project Type:      Roof       Utilities       Mechanical       Exterior       Other

Facility Type(s) Involved:

Faculty/Administration Offices	<input type="checkbox"/>	Classroom/Laboratory	<input checked="" type="checkbox"/>	Library/LRC	<input type="checkbox"/>
Theater/Performing Arts	<input type="checkbox"/>	Physical Education	<input type="checkbox"/>	Support Services	<input type="checkbox"/>
Campuswide	<input type="checkbox"/>	Warehouse/Maintenance	<input type="checkbox"/>	Child Care	<input type="checkbox"/>
		Other: _____	<input type="checkbox"/>	Cafeteria	<input type="checkbox"/>

How Long Has Problem Existed?      0 yrs.       6 mo.-1 yr.       1-2 yrs.       2-5 yrs.       Always

Adverse Immediate Effect(s) if Uncorrected (justification attached):

Safety Hazard	<input type="checkbox"/>	Code Violation	<input type="checkbox"/>	Campus/Facility Closure	<input type="checkbox"/>
Inconvenience	<input type="checkbox"/>	Disruption of Program(s)	<input checked="" type="checkbox"/>	Greater Future Damage/Costs	<input type="checkbox"/>
				Potential/Future Damage/Costs	<input type="checkbox"/>

Corrective Method:      Repair/Refinish Existing       Replace w/comparable Unit       Upgrade

**Budget Summary (Where Maximums Apply, % Based on Construction Costs)**

1. Permits and Fees (Architect/Engineer, Plan Check Fees, Misc.-11% max.)	\$	<u>4,400.00</u>
2. Construction Costs (@ CCI 4019)	\$	<u>40,000.00</u>
3. Inspection	\$	<u>1,800.00</u>
4. Contingency (7% maximum)	\$	<u>2,800.00</u>
5. Total Project (Sum of items 1 through 4)	\$	<u>49,000.00</u>

I hereby certify that if this project is approved for funding from the 2003-04 Budget Act, that the district will be able to provide all match requirements and it is the district's intent to award a contract during the 2003-04 fiscal year.

**District Certification**

Business Manager: <u>Big Boss</u>	Return to: California Community Colleges Facilities Planning and Utilization 1102 Q Street Sacramento, CA 95814-6511
Project Director: <u>Lotsa Work</u>	
Telephone Number: <u>( 123 ) 456-7890</u>	

Submit by December 20, 2002

## District Scheduled Maintenance 5 Year Plan

\_\_\_\_\_  
College Campus

\_\_\_\_\_  
Community College District

\_\_\_\_\_  
District Certification (Signature)

### List of Critical Needs by Category

Other Critical Needs (2003-04 through 2007-08)

Fiscal Year of Funding <sup>1</sup> (1)	Type and Description of Needs (2)	(CCI 4019) Estimated Repair/ Replacement Cost (3)	State or Local Funds (74)

<sup>1</sup>Report five fiscal years of needs and total for each fiscal year.

Submit by December 20, 2002

## District Scheduled Maintenance 5 Year Plan

\_\_\_\_\_ Community College District

\_\_\_\_\_ College Campus

\_\_\_\_\_ District Certification (Signature)

### List of Critical Needs by Category

Exterior Refinishing and Repair (2003-04 through 2007-08)

Fiscal Year of Funding <sup>1</sup> (1)	Type and Size of Facility (2)	Years Since Prior Refinishing (3)	(CCI 4019) Estimated Repair/ Replacement Cost (4)	State or Local Funds (5)

<sup>1</sup>Report five fiscal years of needs and total for each fiscal year.

Submit by December 20, 2002

## District Scheduled Maintenance 5 Year Plan

\_\_\_\_\_ College Campus  
 \_\_\_\_\_ Community College District  
 \_\_\_\_\_ District Certification (Signature)

### List of Critical Needs by Category

Mechanical Equipment Repair of Replacement (2003-04 through 2007-08)

Fiscal Year of Funding <sup>1</sup> (1)	Type/Use (2)	Age (3)	Type of Facility Served (4)	Estimated Repair/Replacement Cost (CCI 4019) (5)	State or Local Funds (6)

<sup>1</sup>Report five fiscal years of needs and total for each fiscal year.

Submit by December 20, 2002

## District Scheduled Maintenance 5 Year Plan

\_\_\_\_\_  
 College Campus

\_\_\_\_\_  
 Community College District

\_\_\_\_\_  
 District Certification (Signature)

### List of Critical Needs by Category

Utility Repair of Replacement (2003-04 through 2007-08)

Fiscal Year of Funding <sup>1</sup> (1)	Type of Utility (2)	Age of Utility (3)	Type of Facility Served (4)	Estimated Repair/Replacement Cost (5)	State or Local Funds (6)

<sup>1</sup>Report five fiscal years of needs and total for each fiscal year.



**CALIFORNIA COMMUNITY COLLEGES**  
Scheduled Maintenance 5 Year Plan Summary

**District** \_\_\_\_\_

**2003-04**

Roof \_\_\_\_\_  
Utility \_\_\_\_\_  
Mechanical \_\_\_\_\_  
Exterior \_\_\_\_\_  
Other \_\_\_\_\_

**2006-07**

Roof \_\_\_\_\_  
Utility \_\_\_\_\_  
Mechanical \_\_\_\_\_  
Exterior \_\_\_\_\_  
Other \_\_\_\_\_

**2004-05**

Roof \_\_\_\_\_  
Utility \_\_\_\_\_  
Mechanical \_\_\_\_\_  
Exterior \_\_\_\_\_  
Other \_\_\_\_\_

**2007-08**

Roof \_\_\_\_\_  
Utility \_\_\_\_\_  
Mechanical \_\_\_\_\_  
Exterior \_\_\_\_\_  
Other \_\_\_\_\_

**2005-06**

Roof \_\_\_\_\_  
Utility \_\_\_\_\_  
Mechanical \_\_\_\_\_  
Exterior \_\_\_\_\_  
Other \_\_\_\_\_

**California Community Colleges  
Scheduled Maintenance Program  
Maintenance of Effort (MOE) Worksheet  
2002-2003 Fiscal Year**

	<b>EXAMPLE</b>	<b>ACTUAL</b>
1) 1995-96 Operations & Maintenance Expenditures (Actual from 1998-99 Annual Audit Report)	<u>\$1,000,000</u>	_____

**2002-2003 EXPENDITURES**

**Routine Maintenance and Operation of Plant  
(Activity 6500)**

2) General Fund Expenditures	<u>\$1,020,000</u>	_____
------------------------------	--------------------	-------

**Physical Property & Related Acquisitions  
(Activity 7100) All Fund Sources**

3) Total Scheduled Maintenance & Special Repairs Grant Project Expenditures Claimed for Reimbursement (Includes State and District Share)	<u>\$400,000</u>	_____
---	------------------	-------

4) District/Other Funded Scheduled Maintenance & Special Repairs Expenditures	<u>\$50,000</u>	_____
---	-----------------	-------

5) <b>Total Expenditures</b>	<u>\$1,470,000</u>	_____
------------------------------	--------------------	-------

**Compliance Test**

<b>Total Expenditures Line (5)</b>	<u>\$1,470,000</u>	_____
------------------------------------	--------------------	-------

**Must be equal to or greater than the sum of**

<b>Lines (1) plus Line (3)</b>	<u>\$1,400,000</u>	_____
--------------------------------	--------------------	-------

# SixTen and Associates Mandate Reimbursement Services

---

KEITH B. PETERSEN, MPA, JD, President  
E-Mail: Kbpsixten@aol.com

**San Diego**  
5252 Balboa Avenue, Suite 900  
San Diego, CA 92117  
Telephone: (858) 514-8605  
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3841 North Freeway Blvd., Suite 170  
Sacramento, CA 95834  
Telephone: (916) 565-6104  
Fax: (916) 564-6103

November 20, 2007

Paula Higashi, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, California 95814

**RECEIVED**

NOV 26 2007

**COMMISSION ON  
STATE MANDATES**

Re: No. CSM. 02-TC -48  
Deferred Maintenance (CCD)

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

1 Keith B. Petersen  
2 SixTen and Associates  
3 3841 North Freeway Blvd, Suite 170  
4 Sacramento, CA 95834  
5 Voice: (916) 565-6104  
6 Fax: (916) 564-6103  
7 kbpsixten@aol.com

8 BEFORE THE  
9 COMMISSION ON STATE MANDATES  
10 STATE OF CALIFORNIA

11	<b>Supplement to the:</b>	)	No. CSM. 02-TC-48
12		)	
13	Test Claim Filed June 27, 2003	)	<u>Deferred Maintenance(CCD)</u>
14		)	
15		)	History Index for
16		)	Title 5, California Code of Regulations
17	by Santa Monica Community College	)	
18	District	)	
19		)	Section 57201
20		)	Section 57202
21		)	Section 57205
22		)	
23		)	

---

24 REQUEST FOR SUPPLEMENTAL INFORMATION

25 This supplement to the test claim provides an index and copy of each change to  
26 the Title 5, CCR, sections included in the test claim. The Registers cited are attached  
27 as Exhibit A. Amended language is underlined (new language) or stricken out (deleted  
28 language).

29 HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

30 **Register 82-28** § 57200-57205: Added new Subchapter 4  
31 **Register 91-23** § 57200-57205: Amendment of Sections submitted to OAL for  
32 printing only pursuant to Government Code Section 11343.8.

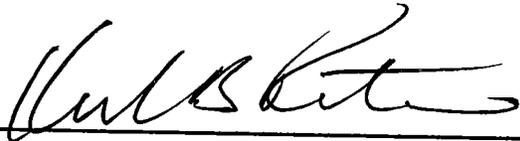
1 **Register 95-23** § 57200-57205: Editorial correction of History 1 which changes the  
2 reference from Government Code Section 11343.8 to Education  
3 Code Section 70901.5 (b)

4 **Subsequent Registers:** There may be changes to the regulations after the date the  
5 test claim was filed, which are not included.

6 CERTIFICATION

7 By my signature below, I hereby declare, under penalty of perjury under the laws  
8 of the State of California, that the information in this document is true and complete to  
9 the best of my own knowledge or information or belief, and that the attached regulations  
10 are true and correct copies of documents from archives of a recognized law library.

11 EXECUTED this 20 day of November 2007, at Sacramento, California

12 

13 FOR THE TEST CLAIMANT

14 Keith Petersen, President

15 SixTen and Associates

16 ATTACHMENT

17 Exhibit A Title 5, CCR Registers

Title 5, CCR, Register 82-28

§ 57201

§ 57202

§ 57205

**CHAPTER 4. DEFERRED MAINTENANCE**

**57200. Purpose.**

For the purposes of administration and implementation of the Community Colleges Facility Deferred Maintenance and Special Repair Program as required by Education Code Sections 84660-84662, the provisions of this chapter shall apply.

NOTE: Authority cited: Section 84661, Education Code. Reference: Sections 84660, 84661 and 84662, Education Code.

**HISTORY:**

1. New Chapter 4 (Sections 57200-57205) filed 7-8-82; effective thirtieth day thereafter (Register 82, No. 28).

**57201. General Requirements.**

Each community college district applying to receive funds pursuant to this chapter shall:

(a) Prepare and submit to the Chancellor a current five-year maintenance plan. The plan shall be consistent with the district's five-year capital outlay plan, but shall not duplicate that plan. The plan shall provide for ongoing as well as deferred maintenance.

(b) Maintain a level of ongoing maintenance during the year for which funds are requested commensurate with the level of activity in prior years.

NOTE: Authority cited: Section 84661, Education Code. Reference: Sections 84660, 84661 and 84662, Education Code.

**57202. Application for Funds.**

Districts shall apply to the Chancellor's Office for funding for deferred maintenance in the form and manner specified by the Chancellor.

NOTE: Authority cited: Section 84661, Education Code. Reference: Sections 84660, 84661 and 84662, Education Code.

**57203. Allocation of Funds.**

The Chancellor shall allocate the funds appropriated by the Legislature as soon as such funds are available, and in accordance with the project priorities established, provided that ten percent (10%) of the funds may be held for contingencies that may occur during the year. Any such funds initially held for contingencies shall be allocated prior to the end of the fiscal year.

NOTE: Authority cited: Section 84661, Education Code. Reference: Sections 84660, 84661 and 84662, Education Code.

**57204. Selection of Projects.**

The Chancellor shall evaluate district applications and rank projects for funding. Projects shall be ranked for funding using the following criteria, which shall be ranked equally:

(a) Health and Safety. Priority shall be given to projects necessary to meet safety requirements and to correct hazardous conditions which, if uncorrected, would result in facility closure or danger to staff and students utilizing the facility.

(b) Prevention of Further More Costly Repairs. Priority shall be given to deferred maintenance for instructional facilities necessary to prevent substantially increased maintenance or replacement costs in the future.

§ 57205  
(p. 678)

CALIFORNIA COMMUNITY COLLEGES

TITLE 5

(Register 82, No. 28--7-10-82)

(c) **Disruption of Programs.** Priority shall be given to projects necessary to prevent disruption of instructional programs.

**NOTE:** Authority cited: Section 84661, Education Code. Reference: Sections 84660, 84661 and 84662, Education Code.

**57205. District Match.**

The Chancellor will allocate funds for only fifty percent of the costs for a deferred maintenance project. In accepting funds under this chapter, a district agrees to spend district funds necessary to complete the project.

The Chancellor may waive this requirement in whole or in part for projects for which the district demonstrates that it cannot make available fifty percent of the costs for the project from other sources.

The Chancellor shall waive this requirement only for projects with high priority for funding. Highest priority shall be given to those projects which the Chancellor determines are necessary to prevent a facility from being closed.

Where projects would otherwise be of equal rank, first priority shall be given to those projects for which the district provides matching funds.

**NOTE:** Authority cited: Section 84661, Education Code. Reference: Sections 84660, 84661 and 84662, Education Code.

**DIVISION 9. CONTINUING EDUCATION**

**NOTE:** Authority cited for Division 9: Sections 71020, 78405 and 66700, Education Code.

**HISTORY:**

1. New Division 9, Chapters 1 through 4 (§§ 58000-58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).

2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

3. Repealer of Division 9 (Chapters 1-4, Sections 58000-58253, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 79, No. 46; 77, No. 45; and 72, No. 1.

(Next page is 684.1)

Title 5, CCR, Register 91-23

§ 57201

§ 57202

§ 57205

(d) The Chancellor shall require that a copy of the (1) Finding of Categorical Exemption (section 15023, title 14, California Administrative Code); Negative Declaration (section 15083, Title 14, California Administrative Code); or Notice of Completion (section 15085(c), title 14, California Administrative Code), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14, California Administrative Code), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with section 81837 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

#### HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

#### § 57140. Procedures.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Section 71091, Education Code; Division 13 (commencing with Section 21000), Public Resources Code.

#### HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of article 3 heading and new NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repeal of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

### Subchapter 3. District Funded Construction Projects

#### § 57150. Purpose.

The purpose of these regulations is to provide basic definitions, principles, and standards for use by the Chancellor of the California Community Colleges in considering any district-funded construction project subject to the requirements of section 81837 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. New chapter 3 (sections 57150-57158, not consecutive) filed 10-30-80; effective thirtieth day thereafter (Register 80, No. 44).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

#### § 57152. Definitions.

(a) "Capital Outlay Project" includes purchase of land and costs related thereto, including court costs, condemnation costs, legal fees, title fees, etc.; construction projects, including working drawings; and equipment related to a construction project regardless of cost or timing.

(b) "Construction Project" includes new construction, alteration, and extension or betterment of existing structures.

(c) "State-Funded Project" means a capital outlay project qualifying as a project pursuant to section 81805 of the Education Code, and for which a district requests or receives State funding assistance.

(d) "District-Funded Project" means a capital outlay project subject to the provisions of section 81837 of the Education Code for which any funds, other than state funds, are paid or to be paid for erecting, adding to, or altering any community college facility.

(e) "Five-Year Construction Plans" means a plan for capital construction for community college purposes of a community college district for the five-year period commencing with the next proposed year of funding. NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

#### § 57154. Application.

In each case, the application for approval of plans for a district-funded project shall be accompanied by the plans and full, complete and accurate take-off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

#### § 57156. Review.

The review and evaluation of plans for a district-funded project by the Chancellor, shall include the following elements:

(a) Review and evaluate each district-funded project with reference to the elements of the capital construction program specified in Education Code section 81821.

(b) The review and evaluation shall be directed particularly to ascertain whether the locally funded project is of appropriate size, is appropriately timed and is justified in terms of the elements of the capital construction plans and where applicable, the standards as adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

#### § 57158. Chancellor's Response to Request for Approval of Plans.

(a) When analysis by the Chancellor shows that approval of the plans for a proposed locally-funded construction of a community college facility would not result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall approve the plans.

(b) When analysis by the Chancellor shows that approval of the plans would result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall respond by:

- (1) Imposing conditions for the approval of the plans; or
- (2) Finding that despite the substantial variance with space standards, the plans, as submitted, are acceptable, and responding to the district with:

(A) Cautions, and/or

(B) Appraisal of the potential consequences of this variance.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment of subsection (b) filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

### Subchapter 4. Deferred Maintenance

#### § 57200. Purpose.

For the purposes of administration and implementation of the Community Colleges Facility Deferred Maintenance and Special Repair Program as required by Education Code section 84660, the provisions of this chapter shall apply.

**NOTE:** Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

**HISTORY**

1. New chapter 4 (sections 57200-57205) filed 7-8-82; effective thirtieth day thereafter (Register 82, No. 28).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

**§ 57201. General Requirements.**

Each community college district applying to receive funds pursuant to this chapter shall:

(a) Prepare and submit to the Chancellor a current five-year maintenance plan. The plan shall be consistent with the district's five-year capital outlay plan, but shall not duplicate that plan. The plan shall provide for ongoing as well as deferred maintenance.

(b) Maintain a level of ongoing maintenance during the year for which funds are requested commensurate with the level of activity in prior years.

**NOTE:** Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

**HISTORY**

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

**§ 57202. Application for Funds.**

Districts shall apply to the Chancellor's Office for funding for deferred maintenance in the form and manner specified by the Chancellor.

**NOTE:** Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

**HISTORY**

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

**§ 57203. Allocation of Funds.**

The Chancellor shall allocate the funds appropriated by the Legislature as soon as such funds are available, and in accordance with the project priorities established, provided that ten percent (10%) of the funds may be held for contingencies that may occur during the year. Any such funds initially held for contingencies shall be allocated prior to the end of the fiscal year.

**NOTE:** Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

**HISTORY**

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

**§ 57204. Selection of Projects.**

The Chancellor shall evaluate district applications and rank projects for funding. Projects shall be ranked for funding using the following criteria, which shall be ranked equally:

(a) Health and Safety. Priority shall be given to projects necessary to meet safety requirements and to correct hazardous conditions which, if uncorrected, would result in facility closure or danger to staff and students utilizing the facility.

(b) Prevention of Further More Costly Repairs. Priority shall be given to deferred maintenance for instructional facilities necessary to prevent substantially increased maintenance or replacement costs in the future.

(c) Disruption of Programs. Priority shall be given to projects necessary to prevent disruption of instructional programs.

**NOTE:** Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

**HISTORY**

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

**§ 57205. District Match.**

The Chancellor will allocate funds for only fifty percent of the costs for a deferred maintenance project. In accepting funds under this chapter, a district agrees to spend district funds necessary to complete the project.

The Chancellor may waive this requirement in whole or in part for projects for which the district demonstrates that it cannot make available fifty percent of the costs for the project from other sources.

The Chancellor shall waive this requirement only for projects with high priority for funding. Highest priority shall be given to those projects which the Chancellor determines are necessary to prevent a facility from being closed.

Where projects would otherwise be of equal rank, first priority shall be given to those projects for which the district provides matching funds.

**NOTE:** Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

**HISTORY**

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

**Chapter 9. Fiscal Support****Subchapter 1. Attendance****Article 1. General Provisions****§ 58000. Introduction.**

The documentation requirements set forth in this chapter have been developed to promote standardized, accurate reporting of data used for calculating the State general apportionment, and to facilitate audits of related community college records. This documentation, based on detailed tabulations of course sections and appropriate support records as described below, shall be available to the auditor retained by the district pursuant to Education Code Section 84040, the Department of Finance, the Auditor General, and the Chancellor's Office. These records may also be required by federal auditors when federal funds are involved.

**NOTE:** Authority cited: Sections 71020, 71062, 76300 and 78405, Education Code. Reference: Sections 84040 and 84040.5, Education Code.

**HISTORY**

1. New Division 9, Chapters 1 through 4 (§§ 58000-58253, not consecutive) filed 12-29-71; effective thirtieth day thereafter (Register 72, No. 1).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 43).
3. Repealer of Division 9 (Chapters 1-4, Sections 58000-58253, not consecutive) filed 12-21-81; effective thirtieth day thereafter (Register 81, No. 52). For prior history, see Registers 79, No. 46; 77, No. 45; and 72, No. 1.
4. New Division 9 (Chapters 1-4, Sections 58000-58308, not consecutive) filed 7-29-82; effective thirtieth day thereafter (Register 82, No. 31).

**§ 58002. Change in Academic Year Terms.**

Prior to any change in academic year terms, including the addition, deletion, shortening or lengthening of any term, the governing board of a district shall request and obtain the approval of the Chancellor. The provisions of Chapter 8 (commencing with Section 55700) of Division 6 shall govern the content, review and approval of such requests.

**NOTE:** Authority cited: Sections 71020, 71062, 78002 and 84520, Education Code. Reference: Sections 78002 and 84520, Education Code.

**Article 2. Attendance Reporting Procedures****§ 58003. Computation of ADA.**

Average daily attendance shall be computed in the manner specified by Section 84520 of the Education Code, and in accordance with the following:

(a) For purposes of computing average daily attendance for courses using a census procedure described in subdivisions (b) or (c) of Education Code Section 84520, a statewide factor of 0.911 shall be used.

(b) "Weekly student contact hours" shall mean the number of class hours each course is regularly scheduled to meet during a week, inclusive of holidays, multiplied by the number of students actively enrolled in the course.

Title 5, CCR, Register 95-23

§ 57201

§ 57202

§ 57205

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57158. Chancellor's Response to Request for Approval of Plans.

(a) When analysis by the Chancellor shows that approval of the plans for a proposed locally-funded construction of a community college facility would not result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall approve the plans.

(b) When analysis by the Chancellor shows that approval of the plans would result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall respond by:

- (1) Imposing conditions for the approval of the plans; or
- (2) Finding that despite the substantial variance with space standards, the plans, as submitted, are acceptable, and responding to the district with:

(A) Cautions, and/or

(B) Appraisal of the potential consequences of this variance.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

#### HISTORY

1. Amendment of subsection (b) filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

## Subchapter 4. Deferred Maintenance

### § 57200. Purpose.

For the purposes of administration and implementation of the Community Colleges Facility Deferred Maintenance and Special Repair Program as required by Education Code section 84660, the provisions of this chapter shall apply.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. New chapter 4 (sections 57200-57205) filed 7-8-82; effective thirtieth day thereafter (Register 82, No. 28).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

### § 57201. General Requirements.

Each community college district applying to receive funds pursuant to this chapter shall:

(a) Prepare and submit to the Chancellor a current five-year maintenance plan. The plan shall be consistent with the district's five-year capital outlay plan, but shall not duplicate that plan. The plan shall provide for ongoing as well as deferred maintenance.

(b) Maintain a level of ongoing maintenance during the year for which funds are requested commensurate with the level of activity in prior years.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23).

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57202. Application for Funds.

Districts shall apply to the Chancellor's Office for funding for deferred maintenance in the form and manner specified by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57203. Allocation of Funds.

The Chancellor shall allocate the funds appropriated by the Legislature as soon as such funds are available, and in accordance with the project priorities established, provided that ten percent (10%) of the funds may be held for contingencies that may occur during the year. Any such funds initially held for contingencies shall be allocated prior to the end of the fiscal year.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57204. Selection of Projects.

The Chancellor shall evaluate district applications and rank projects for funding. Projects shall be ranked for funding using the following criteria, which shall be ranked equally:

(a) Health and Safety. Priority shall be given to projects necessary to meet safety requirements and to correct hazardous conditions which, if uncorrected, would result in facility closure or danger to staff and students utilizing the facility.

(b) Prevention of Further More Costly Repairs. Priority shall be given to deferred maintenance for instructional facilities necessary to prevent substantially increased maintenance or replacement costs in the future.

(c) Disruption of Programs. Priority shall be given to projects necessary to prevent disruption of instructional programs.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

### § 57205. District Match.

The Chancellor will allocate funds for only fifty percent of the costs for a deferred maintenance project. In accepting funds under this chapter, a district agrees to spend district funds necessary to complete the project.

The Chancellor may waive this requirement in whole or in part for projects for which the district demonstrates that it cannot make available fifty percent of the costs for the project from other sources.

The Chancellor shall waive this requirement only for projects with high priority for funding. Highest priority shall be given to those projects which the Chancellor determines are necessary to prevent a facility from being closed.

Where projects would otherwise be of equal rank, first priority shall be given to those projects for which the district provides matching funds.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

#### HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

# SixTen and Associates Mandate Reimbursement Services

---

KEITH B. PETERSEN, MPA, JD, President  
E-Mail: Kbpsixten@aol.com

**San Diego**  
5252 Balboa Avenue, Suite 900  
San Diego, CA 92117  
Telephone: (858) 514-8605  
Fax: (858) 514-8645

**Sacramento**  
3841 North Freeway Blvd., Suite 170  
Sacramento, CA 95834  
Telephone: (916) 565-6104  
Fax: (916) 564-6103

June 25, 2008

**RECEIVED**

JUN 25 2008

**COMMISSION ON  
STATE MANDATES**

Paula Higashi, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Re: CSM 02-TC-48  
Deferred Maintenance (CCD)

Dear Ms. Higashi:

On November 20, 2007, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the history of the Title 5, CCR, sections included in the test claim, at the request of the Commission staff.

This letter transmits, on behalf of the test claimant, the list of registers and relevant section numbers, in the form of a new attachment page to the CSM 2 form.

Sincerely,



Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor  
Finance and Administration  
State Center Community College District  
1525 East Weldon  
Fresno, CA 93704-6398

02-TC-48 Deferred Maintenance (CCD)  
Test Claim of Santa Monica Community College District  
New Attachment to Form CSM 2 (1/91) Test Claim Form

**Register 82-28**

Title 5, Sections: 57200 57201 57202 57203 57204  
57205

**Register 91-23**

Title 5, Sections: 57200 57201 57202 57203 57204  
57205

**Register 95-23**

Title 5, Sections: 57200 57201 57202 57203 57204  
57205



ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 6, 2004

RECEIVED

FEB 13 2004

COMMISSION ON STATE MANDATES

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 received and reviewed Commission on State Mandates Test Claim No. 02-TC-48, Deferred Maintenance, submitted by the Santa Monica Community College District (SMCCD). Based on our review of the claim and the relevant State statutes and regulations, it is clear that a community college district's participation in the Community College Facility Deferred Maintenance Program (program) is entirely the result of a discretionary decision made by the governing board of each district to apply for available funding. As a result, we must conclude that the State laws and regulations at issue in this test claim do not create a State-mandated reimbursable activity, and we therefore request that the test claim be denied in its entirety.

Education Code Section 84660, which authorizes the program, states:

"...It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, **nothing in this chapter shall be construed to create an annual state obligation to fund this program...** [emphasis added]"

This Section goes on to state the following:

"...The Board of Governors of the California Community Colleges shall adopt rules and regulations **for the allocation of funds authorized by this chapter** for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of **requests** for funding by community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the board of governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance **in order to be eligible for state funding** of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair **as a condition for the receipt of state funding**, subject to a complete or partial waiver of this requirement by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district...[emphasis added]"

The decision to submit a request for funding lies with the individual districts, and is not compelled by language in this statute. The conditions for which the claimant seeks reimbursement (district matching funds, costs of submitting five-year plans, etc.) follow only from their active and independent decision to submit a request for deferred maintenance funding, and subsequently

receive a promise of funds from the State based upon that request. As shown by the emphasized language noted above, the requirements established by the Board of Governors merely set forth minimum standards that a district must meet if it chooses to become eligible for funding, but meeting these criteria is not compulsory. Furthermore, the plain language of the statute recognizes not only that sufficient funding may not always be available for the program, but also that establishment of the program in statute should not be construed as to create an annual state obligation to fund it.

Thus, not only does the statute indicate that the program is limited in its availability to years in which the Legislature provides funding for it, but funding is limited to only those districts that request it through the application process, and in compliance with the eligibility criteria, established by the Board of Governors. Therefore, the regulations and their underlying statutory requirements for which the claimant seeks reimbursement are not State-mandated activities.

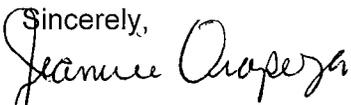
A recent decision by the Commission on State Mandates lends additional support to the preceding arguments. In Test Claim 97-TC-14 (January 25, 2001), a school district challenged the statutes requiring districts to bear all costs associated with a request for an emergency apportionment. Although the claimant argued that the financial position of some districts made submitting a request necessary, rather than optional, the Commission rejected their argument. Instead, the Commission concluded in its decision: "Based on upon the plain language of the test claim statute it is clear that districts may request an emergency apportionment. However, they are not required to do so. The test claim legislation merely provides a procedure for school districts to borrow funds. Thus, the school district, and not the State, imposes the requirements of the test claim legislation by requesting an emergency apportionment."

This decision clearly parallels the statutory language, program framework, and circumstances of the present test claim submitted by SMCCD. The requirements for which the SMCCD seeks reimbursement are triggered only after a district decides to request funding under the program. The statutes at issue in this test claim merely provide a mechanism for making such a request, as well as require the Board of Governors to establish minimum criteria to establish program eligibility, but they do not require a district to submit a request unless the district wishes to be eligible for State funding. Further support for this conclusion is provided by the courts in the following cases: (1) Department of Finance v. Commission on State Mandates (2003) 30 Cal. 4<sup>th</sup> 727; (2) City of Merced v. State of California (1984), 153 Cal. App. 3d 777; and (3) County of Contra Costa v. State of California (1986), 177 Cal. App. 3d, 62, 79.

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 August 18, 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 Pete Cervinka, 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  
Program Budget Manager

Attachment

Attachment A

DECLARATION OF PETE CERVINKA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-02-TC-29

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.

2/6/2004

at Sacramento, CA



Pete Cervinka

## PROOF OF SERVICE

Test Claim Name: Extended Opportunity Programs and Services  
Test Claim Number: CSM-02-TC-29

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, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On February 6, 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, 7<sup>th</sup> 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-8

State Controller's Office  
Division of Accounting & Reporting  
Attention: Michael Havey  
3301 C Street, Room 500  
Sacramento, CA 95816

G-01

California Community Colleges  
Attention: Thomas J. Nussbaum  
1102 Q Street, Suite 300  
Sacramento, CA 95814

Santa Monica Community College District  
Attention: Thomas J. Donner  
1900 Pico Boulevard  
Santa Monica, CA 90405-1628

Centration, Inc.

Attention: Beth Hunter  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

Shields Consulting Group, Inc.

Attention: Steve Shields  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

Education Mandated Cost Network

Attention: Carol Berg, Ph.D.  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Mandated Cost Systems

Attention: Steve Smith  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

SixTen & Associates

Attention: Keith B. Petersen  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Spector, Middleton, Young & Minney, LLP

Attention: Paul Minney  
7 Park Center Drive  
Sacramento CA 95825

Mandate Resource Services  
Attention: Harmeet Barkschat  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Reynolds Consulting Group, Inc.  
Attention: Sandy Reynolds  
P.O. Box 987  
Sun City, CA 92586

B-29  
Legislative Analyst's Office  
Attention: Marianne O'Malley  
925 L Street, Suite 1000

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 6, 2004, at Sacramento, California.



---

Jennifer Nelson

# SixTen and Associates

## Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Telephone: (858) 514-8605  
Fax: (858) 514-8645  
E-Mail: Kbpsixten@aol.com

February 24, 2004

**RECEIVED**

FEB 26 2004

**COMMISSION ON  
STATE MANDATES**

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-48  
Santa Monica Community College District  
Deferred Maintenance (CCD)

Dear Ms. Higashi:

I have received the comments of the Department of Finance (DOF) dated February 6, 2004 to which I now respond on behalf of the test claimant.

Although none of the objections generated by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

**1. The Comments of DOF are Incompetent and Should be Excluded**

Test claimant objects to the Comments of 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 and 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.

**2. The Possible Lack of an Annual Appropriation Does Not Preclude the Finding of a Mandate**

DOF does not argue that the test claim legislation and regulations do not contain mandated activities, but uses two sentences in subdivision (a) of Education Code Section 84660 to argue that the test claim should be denied:

“However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.”

The answer is simple. In years when an annual appropriation is made, community colleges will incur state mandated costs by compliance; whereas, in years where no annual appropriation is made, they may not. But this does not preclude the finding of a mandate.

**3. Legal Compulsion is not Required**

The balance of DOF’s argument is an indirect suggestion that community college districts are not required to seek state funding of its deferred maintenance needs. That very same subdivision (a) of Education Code Section 84660 is a starting point for the rebuttal of this argument:

“The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.” (Emphasis added)

This is just another “carrot and stick” situation.

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*).

(a) 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.

(b) 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).<sup>1</sup>

---

<sup>1</sup> 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."

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to “compulsion”.

(c) *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”.

(d) *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 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”.

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)

(e) Statutory Compulsion is not Required

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736, 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 affirmed 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)

Therefore, “carrot and stick” situations must still be determined on a case by case basis. 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 Legislative finding (*supra*) that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities, this is a situation of a very large carrot and very short stick.

Lacking funds to complete periodic maintenance or make timely repairs, community college districts have “no true choice” other than to comply with the test claim legislation and regulation mandated activities to obtain matching funds from the state. To ignore available funding is so far beyond the realm of practical reality, that it leaves community college districts without any rational discretion.

#### 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: Deferred Maintenance Programs 02-TC-48  
CLAIMANT: Santa Monica Community College 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 24, 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.

**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.

**OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

\_\_\_\_\_(Describe)

**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 2/24/04 , at San Diego, California.

  
\_\_\_\_\_  
Diane Bramwell

# Commission on State Mandates

Original List Date: 7/9/2003

Mailing Information: Other

Last Updated:

List Print Date: 09/17/2003

## Mailing List

Claim Number: 02-TC-48

Issue: Deferred Maintenance (CCD)

### 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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## STATE OF CALIFORNIA

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RECEIVED

MAR 16 2004

COMMISSION ON  
STATE MANDATES

March 11, 2004

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

Re: Deferred Maintenance; 02-TC-48  
Santa Monica Community College District, Claimant  
Education Code section 84660  
California Code of Regulations, title 5, sections 57201, 57202, and 57205

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above test claim in light of the following questions addressing key issues before the Commission:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- 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?

Claimant alleges that Education Code section 84660, regarding the deferred maintenance and special repair program and the implementing regulations found in the California Code of Regulations, title 5, sections 57201, 57202, and 57205 create a reimbursable state mandate.

These provisions do not impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code because the Legislature provides funding for the deferred maintenance program. Furthermore, participation in the program is not mandatory, but entirely voluntary.

In 1981 the Legislature created the deferred maintenance program in recognition that many community college districts might not possess the funds necessary to provide for periodic maintenance and timely repair of community college facilities. The Legislature underscored that

no annual state obligation was created and funding for the program was to be provided via the annual budget process when sufficient state resources were available.

Funding to implement section 84660 is now part of the annual appropriation for Deferred Maintenance in Schedule (24) of Item 6870-101-0001 of the Budget Act. For 2003-04 the total funding for deferred maintenance is \$24,941,000. Comparable allocations were provided in other fiscal years.

Thus, additional funds specifically intended to fund the costs of the Deferred Maintenance program are provided by the state, and Government Code section 17556(e) precludes the Commission from finding that section 84660 and the implementing regulations for the Deferred Maintenance program impose state mandated costs.

However, the Commission need not rely on Government Code section 17556(e) because Education Code section 84660 and the implementing regulations for the Deferred Maintenance program do not require community college districts to begin a new program or undertake any higher level of service. District participation in the Deferred Maintenance program is entirely voluntary.

In a recent California Supreme Court case, *Department of Finance v. Commission on State Mandates (Kern High School)* (2003) 30 Cal.4th 727, the Kern High School District sought reimbursement for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that no state mandates exist when a school district is not legally compelled, but instead voluntarily participates in a state-funded program because the benefits of the funded program are too beneficial to refuse. (*Id.*, at p. 731.)

Deferred maintenance obligations are directly tied to voluntary application for deferred or scheduled maintenance funding. Thus, a district's request for deferred maintenance funding is the source of any obligations. Education Code section 84660 verifies that the statutory obligations and the regulations implementing them are only operative if funds are specifically appropriated for deferred maintenance. Education Code section 84660(b) provides in part that "[t]he adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursuant to this chapter." (Emphasis added.) In addition, title 5, section 57201 states, in pertinent part, "[e]ach community college district applying to receive funds pursuant to this chapter shall: . . ." (Emphasis added.)

Districts that do apply for and accept Deferred Maintenance funding are required to match the funding dollar for dollar with district resources; however, this requirement can be waived under certain conditions. (Ed. Code, § 84660(b); Cal. Code Regs, tit. 5, § 57205.) The choice to apply for Deferred Maintenance program funds carries certain obligations such as preparation of a 5-year maintenance plan (Ed. Code, § 84660(b); Cal. Code Regs, tit. 5, § 57201(a)) and maintaining specified levels of facility maintenance (Ed. Code, § 84660(b); Cal. Code Regs, tit. 5, § 57201(b)). However, because participation is discretionary as to districts, under *Kern High School, supra*, 30 Cal.4th 727, the requirements of Education Code section 84660 and California Code of Regulations, title 5, sections 57201, 57202, and 57205 carry no state mandate.

For the reasons stated above, we believe there is no basis for reimbursement and we recommend rejection of the claim.

Sincerely,

A handwritten signature in black ink that reads "Frederick E. Harris". The signature is written in a cursive style with a large, stylized initial "F".

FREDERICK E. HARRIS, Assistant Vice Chancellor  
College Finance and Facilities Planning

# SixTen and Associates

## Mandate Reimbursement Services

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KEITH B. PETERSEN, MPA, JD, President  
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April 23, 2004

RECEIVED

APR 28 2004

COMMISSION ON  
 STATE MANDATES

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-48  
 Santa Monica Community College District  
Deferred Maintenance (CCD)

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11<sup>1</sup>, 2004, to which I now respond on behalf of the test claimant.

**A. The Comments of CCC are Incompetent and Should be Excluded**

Test claimant objects to the comments of CCC, 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."

---

<sup>1</sup> Although dated March 11, 2004, these comments were received by e-mail on March 16, 2004, along with comments for 13 other test claims.

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since CCC 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.”

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or 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 and assertions of CCC not be included in the Staff’s analysis.

**B. Government Code Section 17556(e) Does Not Bar a Finding of a Reimbursable Mandate**

CCC contends that funding to implement Education Code Section 84660 is now part of an annual appropriation in the Budget Act and, therefore, Government Code Section 17556(e) precludes the Commission from finding that section 84660 and its implementing regulations impose state mandated costs.

Subdivision (e) of Government Code Section 17556 provides:

“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:...

(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...”

First of all, subdivision (e) only applies when the funding provided is in the test claim statute or executive order. No funding is provided in Education Code Section 84660 or

any of its implementing regulations. Subdivision (e) applies only when the additional revenue is in an amount sufficient to fund the cost of the state mandate. There is no competent evidence before the commission that any annual appropriation is sufficient to fund the cost of the state mandate. In fact, the second paragraph of Education Code Section 84660, subdivision (a), provides:

“It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.”

The “intent” of the Legislature may often be noble, but more often unfulfilled. Furthermore, the Legislature specifically acknowledged that there may not be sufficient revenues in future years to provide an annual appropriation. Finally, the Legislature issued a caveat that nothing in the chapter shall be construed to create an annual state obligation.

Therefore, the prospect of any appropriation is not a bar to a finding of a state mandate. Any appropriation actually received and intended to fund the costs of the mandated activities of this test claim will be used as an offset to any annual claim.

**C. Legal Compulsion is not Necessarily Required for a Finding of a Mandate**

CCC next argues that Education Code Section 84660 and its implementing regulations do not require community college districts to begin a new program or undertake any higher level of service because district participation is entirely voluntary. CCC cites *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727 (hereinafter, “*Kern*”) for the proposition that there can be no state mandate when a school district is not “legally compelled.” There is no such finding in *Kern*!

A finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of legal compulsion *vis-a-vis* non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 (hereinafter “*Kern*”).

(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 / 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).<sup>2</sup> (Opinion, at pages 194-199)

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<sup>2</sup> 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."

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. (Opinion, at pages 66-70)

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.” (Opinion, at pages 70-74)

(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 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 Kern, at page 736, 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,<sup>3</sup> 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

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<sup>3</sup> This Kern disclaimer that “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” refutes CCC’s interpretation of Kern that legal compulsion is necessary for a finding of a mandate.

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 the existence of 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

The process for such a determination is found in *Sacramento II*, that is, the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district 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.

Here, the Legislature has made special findings. The first paragraph of subdivision (a) of Education Code Section 84660 provides:

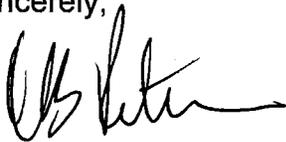
“(a) The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.”

Taking this special finding of the Legislature into consideration, and the recognition that high costs and limited revenues restrict the ability to provide periodic maintenance and timely repairs of college facilities, the amounts of money made available for the act of complying with the test claim mandated activities equates to a very large carrot and a very short stick.

**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 or belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

## DECLARATION OF SERVICE

RE: Deferred Maintenance (CCD) 02-TC-48  
CLAIMANT: Santa Monica Community College 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 April 23, 2004, addressed as follows:

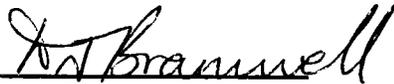
Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

- |   |  |
|---|--|
| <p><input checked="" type="checkbox"/> <b>U.S. MAIL:</b> 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.</p> <p><input type="checkbox"/> <b>OTHER SERVICE:</b> I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____ (Describe)</p> | <p><input type="checkbox"/> <b>FACSIMILE TRANSMISSION:</b> 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.</p> <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> <b>PERSONAL SERVICE:</b> By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |
|---|--|

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/23/04, at San Diego, California.

  
Diane Bramwell

# Commission on State Mandates

Original List Date: 7/9/2003  
Last Updated:  
List Print Date: 09/17/2003  
Claim Number: 02-TC-48  
Issue: Deferred Maintenance (CCD)

Mailing Information: Other

## Mailing List

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Mr. Michael Havey  
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Mr. Keith Gmeinder  
Department of Finance (A-15)  
915 L Street, 8th Floor  
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Fax: (916) 327-0225

Hearing Date: September 29, 2011  
 J:\MANDATES\2002\tc\02-tc-48\tc\dsa.doc

**ITEM \_\_\_\_**  
**TEST CLAIM**  
**DRAFT STAFF ANALYSIS**

Education Code Section 84660

Statutes 1981, Chapter 764; Statutes 1990, Chapter 1372

California Code of Regulations, Title 5, Sections 57201, 57202, 57205

Register 82, No. 28 (July 10, 1982), Pages 677-678; Register 91, No. 23 (June 7, 1991) Pages  
 377-378; Register 95, No. 23 (June 9, 1995) Page 379

“Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding  
 Proposals” Chancellor’s Office, California Community Colleges

*Deferred Maintenance (CCD)*  
 02-TC-48

Santa Monica Community College District, Claimant

**EXECUTIVE SUMMARY**

The test claim statute and regulations consist of a grant program, the Community College Facility Deferred Maintenance and Special Repair Program, to assist community colleges with deferred maintenance projects. The Legislature, in enacting the program, expressed intent that “funds be allocated . . . to provide for the deferred maintenance and special repair of community college facilities.” Recognizing that there may not be funds in future years to appropriate money to the program, the Legislature also stated that “nothing in this chapter shall be construed to create an annual state obligation to fund this program.”

Regulations were adopted for the program that: (1) establish criteria for ranking requests for funding by districts; (2) require districts to prepare and submit to the board of governors a five-year maintenance plan that includes plans for preventative as well as deferred maintenance in order to be eligible for state funding; and (3) require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for receipt of state funding, subject to a complete or partial waiver based on a review of the financial condition of the district.

Districts apply to the Chancellor’s Office for funding for deferred maintenance in the form and manner specified by the Chancellor. This application information is in a publication of the Chancellor’s Office (also part of the test claim) entitled “Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals” (Chancellor’s Office manual).

## **Procedural History**

The test claim was submitted by the Santa Monica Community College District on June 27, 2003. The Department of Finance filed comments on February 9, 2004, and the Chancellor's Office filed comments on March 16, 2004. The claimant filed rebuttal comments on February 26, 2004 and April 28, 2004.

## **Positions of Parties and Interested Parties**

### Claimant's Position

Claimant Santa Monica Community College District asserts that the test claim statutes, regulations, and manual constitute a reimbursable state mandate. Claimant also argues that legal compulsion is not required to find a state mandate, and the test claim statutes and executive orders constitute practical compulsion to comply with their requirements.

### Department of Finance

The Department of Finance states that the district's participation in the Community College Facility Deferred Maintenance Program is "entirely the result of a discretionary decision made by the governing board of each district to apply for available funding." Thus, Finance concludes that the test claim statutes, regulations, and manual do not create a state-mandated reimbursable program, and request that the test claim be denied.

### Chancellor's Office

The Chancellor of the California Community Colleges states that the test claim provisions do not impose a new program or higher level of service because the Legislature funds the Deferred Maintenance program with funding specifically intended to fund the costs of the program, and because "participation in the program is not mandatory, but entirely voluntary."

## **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local governments and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments or school districts to be eligible for reimbursement, one or more similarly situated local governments 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.

## **Staff Analysis**

The first issue is whether the Chancellor's Office manual is an executive order as defined in Government Code section 17516. If it is, the Commission would have jurisdiction to determine

if the manual is subject to article XIII B, section 6. Staff finds that the manual is an executive order because it contains requirements for the Deferred Maintenance program.

The second issue is whether the test claim statutes and executive orders constitute a state-mandated program. Staff finds that they do not. The plain language in the statutes and regulations authorizes but does not require districts to apply for funding. It is the decision of a community college district to seek state funding assistance for proposed deferred maintenance projects that triggers the activities required by the test claim statute, regulations, and manual. Under these circumstances, the activities are not mandated by the state.

Staff further disagrees with the claimant's argument that the program practically compels community colleges to participate in the program and comply with the requirements. The Supreme Court in the *Kern School Dist.* case described practical compulsion as "if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program..." There is no such penalty in the test claim statutes, regulations, or manual, and no evidence that community college districts will suffer "certain and severe penalties" or other "draconian consequences" if they do not participate. Thus, the state has not imposed a state-mandated program on community college districts.

### **Conclusion and Recommendation**

Staff finds that Education Code section 84660 (Stats. 1981, ch. 764, Stats. 1990, ch. 1372); sections 57201, 57202 and 57205 of the title 5 regulations; and the Chancellor's Office manual do not impose a reimbursable state mandate on community college districts within the meaning of article XIII B, section 6, of the California Constitution.

Staff recommends that the Commission adopt this analysis to deny the test claim.

## STAFF ANALYSIS

### Claimants

Santa Monica Community College District

### Chronology

06/27/2003 Santa Monica Community College District files test claim 02-TC-48  
02/09/2004 Department of Finance files comments  
02/26/2004 Claimant files rebuttal comments to Department of Finance's comments  
03/16/2004 Community Colleges Chancellor's Office files comments  
04/28/2004 Claimant files rebuttal comments to Chancellor's Office comments  
11/26/2007 Claimant files a history of the title 5 regulations in the test claim  
06/25/2008 Claimant files a list of registers and section numbers for the regulations in the test claim

### I. Background

The test claim statute and regulations consist of a grant program to assist community colleges with deferred maintenance and special repair. "Deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended." (Ed. Code, § 84660(b)<sup>1</sup>.) The Legislature stated the purpose of the test claim statute as follows:

The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. *Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.* (§ 84660, Stats. 1981, ch. 764, Stats. 1990, ch. 1372; emphasis added.)

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<sup>1</sup> All statutory references are to the Education Code unless otherwise indicated.

To further this purpose, the Legislature established the Community College Facility Deferred Maintenance and Special Repair Program under which the Board of Governors of the California Community Colleges adopts rules and regulations for the allocation of funds for deferred maintenance and special repair of community college facilities. The adopted rules and regulations are to do the following:

- Establish criteria for ranking requests for funding by districts for funds allocated;
- Require districts to prepare and submit to the board of governors a five-year maintenance plan that includes plans for preventative as well as deferred maintenance in order to be eligible for state funding; and
- Require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for receipt of state funding, subject to a complete or partial waiver of this requirement based on a review of the financial condition of the district. (§ 84660 (b).)

Community college districts are not to receive funds unless the districts spend at least one-half percent of their current operating budgets for ongoing maintenance, unless the board of governors increases this percentage. (§ 84660(c) & (d).) The legislative intent is for state funds to supplement but not supplant district deferred maintenance funds. (§ 84660(e).)

The regulations adopted by the board of governors list the general requirements for funding, such as preparing and submitting to the Chancellor a five-year maintenance plan (consistent with but not duplicating the five-year capital outlay plan) that provides for ongoing as well as deferred maintenance. Districts are required to maintain a level of ongoing maintenance during which funds are requested commensurate with the level of activity in prior years. (Cal.Code Regs., tit. 5, § 57201.)

The Chancellor allocates funds for only 50 percent of the cost of deferred maintenance projects. A district accepting funds agrees to spend funds necessary to complete the project. The Chancellor may partially or wholly waive this matching requirement for districts that demonstrate that they cannot make available 50 percent of the cost for the project. The waiver is only for high priority projects, defined as those necessary to prevent a facility from being closed. (Cal.Code Regs., tit. 5, § 57205.)

Districts apply to the Chancellor's Office for funding for deferred maintenance in the form and manner specified by the Chancellor. (Cal.Code Regs., tit. 5, § 57202.) This information is in a publication of the Chancellor's Office (also part of the test claim) entitled "Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals" ("Chancellor's Office manual"). According to this manual:

[D]istricts submit individual project proposals identifying the scope and justification for each project. For fiscal year 1999-2000 over 1,200 scheduled maintenance projects valued at over \$210 million are identified in the individual project proposals. With the funds in this on-going program the state is able to address \$78 million in projects for 1999-00. Some of the common types of problems that tend to plague the colleges are, in priority order: roof, mechanical, and utility repairs/replacement; infrastructure/land erosion control; replacement of doors, windows, floors, ceiling and hardware; exterior/interior refurbishing; and

resurfacing of tennis courts, swimming pools, walkways, running tracks and roadways.<sup>2</sup>

The Chancellor's Office manual also contains instructions on filling out a Project Funding Proposal form, a description of the grant process, information on grant management, evaluation criteria, categories for scheduled maintenance projects, and criteria for evaluating a waiver of the district's match.

The Chancellor's Office manual includes similar information on the Hazardous Substances program, a parallel "local assistance" program to help districts "in the control of environmental hazards such as asbestos materials, polychlorinated biphenyl (PCB), lead, chemical removal, radon, and underground tanks and their contents, which pose an immediate danger to human health and safety at California community college facilities."<sup>3</sup> According to the manual, "[a] Hazardous Substances Project Funding Proposal (241/HS/PFP) is used for requesting financial support for local assistance funds in the state program's budget for that project."<sup>4</sup> The manual's instructions are "intended for districts who wish to participate in the state-assisted Hazardous Substances Program assuming availability of funds."<sup>5</sup>

### **Claimant's Position**

The claimant states that the following activities are reimbursable mandates subject to article XIII B, section 6 and Government Code section 17514:

- To prepare and submit to the Chancellor's Office a current Scheduled Maintenance Five-Year plan (241/SM5Y) on or before December 1<sup>st</sup> of each year, consistent with the district's five-year capital outlay plan, but not a duplicate of that plan, including plans for preventative, ongoing and deferred maintenance, pursuant to Education Code Section 84660(b), Title 5, California Code of Regulations Section 57201(a), and the Chancellor's Office manual of December 2001, page 4.
- To maintain a level of ongoing maintenance during the year for which funds requested are commensurate with the level of activity in prior years, pursuant to Title 5, California Code of Regulations Section 57201 (b). The district must expend at least ½ percent of its current operating budget for ongoing maintenance to receive funds for deferred maintenance or special repair, pursuant to Education Code Section 84660(c), and the Chancellor's Office manual, page 5.

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<sup>2</sup> Chancellor's Office of the California Community Colleges, Facilities Planning, "Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals." Revised December 2001, pages 1-2.

<sup>3</sup> Chancellor's Office of the California Community Colleges, Facilities Planning, "Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals." Revised December 2001, page 21.

<sup>4</sup> *Id.* at page 23.

<sup>5</sup> *Id.* at page 24.

- To apply for deferred maintenance funding in the form and manner specified by the Chancellor’s Office, pursuant to Title 5, California Code of Regulations Section 57202.
- To provide for a matching contribution for deferred maintenance unless waived by the Chancellor’s Office for financial hardship, pursuant to Education Code Section 84660. When it accepts funds, the district must agree to spend district funds necessary to complete the project (up to 50 percent), unless completely or partially waived by the Chancellor’s Office, pursuant to Title 5, California Code of Regulations Section 57205. If the district cannot meet the financial commitment because of financial hardship, it shall submit a match waiver request, pursuant to the Chancellor’s Office manual, page 7.
- To prepare and submit a Scheduled Maintenance Project Funding Proposal (241/SM/PFP) on or before December 1<sup>st</sup> of each year, pursuant to the Chancellor’s Office manual, pages 3, 6.
  - To include data that will readily identify the district, college, or center project, and the assigned district priority number, pursuant to the Chancellor’s Office manual, pages 4, 6.
  - To certify the Proposal by the signature of the Chief Executive Officer or other authorized individual, pursuant to the Chancellor’s Office manual, pages 4, 6.
  - To identify what programs are affected, describe the maintenance problem, preventative measures taken, adverse effects if not corrected and corrective measures needed to remedy the situation, pursuant to the Chancellor’s Office manual, page 6.
  - To clearly identify project type, facility type(s) involved, how long the problem existed, and the adverse effects if uncorrected (a safety hazard must be supported by valid documentation), pursuant to the Chancellor’s Office manual, page 6.
  - To include construction management costs (including expenditures for Architects, Engineering, Permit Fees, Plan Check Fees, as well as Construction Management) as a supplemental element of the project cost estimate in the “Permits and Fees” budget summary line item, pursuant to the Chancellor’s Office manual, pages 6, 7.
- To use, as may be necessary, district staff for completion of projects if their staff performs these tasks on overtime or weekends, or temporary staff hired to perform tasks from the beginning to the completion of project, pursuant to the Chancellor’s Office manual, page 7.
- To issue a written request to the Chancellor’s Office Facilities Planning Unit identifying any revisions a district needs to make to the preliminary list of projects to ensure that the scope, costs, and projected match requirements are still feasible, pursuant to the Chancellor’s Office manual, page 7.
- To submit the final year claims by May 15<sup>th</sup> of the fourth year to the Chancellor’s Office, pursuant to the Chancellor’s Office manual, page 8.

- To notify the program monitor and supply information, if the bid amount is greater than the amount of the proposal, any information of why the bid is greater than the initial cost estimate and how the district plans on meeting the shortfall of funding while addressing the scope of the proposal, pursuant to the Chancellor’s Office manual, page 8.
- To submit claims to the Chancellor’s Office on a monthly basis for work complete or in progress, except for claims of less than \$1,000 (unless it is the final claim), pursuant to the Chancellor’s Office manual, page 9.
- To include in any claims containing district staff hourly charges, the detailed itemized records for the direct expenses showing work performed beyond the normal work period, pursuant to the Chancellor’s Office manual, page 9.
- To prepare and submit a Hazardous Substances Project Funding Proposal (241/HS/PFP) on or before January 30<sup>th</sup> of each year, pursuant to the Chancellor’s Office manual, pages 23, 25.
  - To include data that will readily identify the district, college, or center project, and the assigned district priority number, pursuant to the Chancellor’s Office manual, pages 24, 25.
  - To certify the Proposal by the signature of the Chief Executive Officer or other authorized individual, pursuant to the Chancellor’s Office manual, page 24.
  - To identify what programs are affected, describe the hazardous problem, means of controlling the hazardous materials, adverse effects if not corrected and corrective measures needed to remedy the situation, and the age and size of the building, pursuant to the Chancellor’s Office manual, page 25.
  - To clearly identify project type, facility type(s) involved, how long the problem existed, and the adverse effects if uncorrected (a safety hazard must be supported by valid documentation), pursuant to the Chancellor’s Office manual, page 25.
  - To include construction management costs (including expenditures for Architects, Engineering, Permit Fees, Plan Check Fees, as well as Construction Management) as a supplemental element of the project cost estimate in the “Permits and Fees” budget summary line item, pursuant to the Chancellor’s Office manual, pages 25, 26.
- To use, as may be necessary, district staff for completion of projects if their staff performs these tasks on overtime or weekends, or temporary staff hired to perform tasks from the beginning to the completion of project, pursuant to the Chancellor’s Office manual, page 26.
- To issue a written request to the Chancellor’s Office Facilities Planning Unit identifying any revisions a district needs to make to the preliminary list of projects to ensure that the scope, costs and projected match requirements are still feasible, pursuant to the Chancellor’s Office manual, page 26.
- To submit the final year claims by May 15<sup>th</sup> of the fourth year to the Chancellor’s Office, pursuant to the Chancellor’s Office manual, page 27.

- To notify the program monitor and supply information, if the bid amount is greater than the amount of the proposal, any information of why the bid is greater than the initial cost estimate and how the district plans on meeting the shortfall of funding while addressing the scope of the proposal, pursuant to the Chancellor’s Office manual, page 27.
- To submit claims to the Chancellor’s Office on a monthly basis for work complete or in progress, except for claims of less than \$1,000 (unless it is the final claim), pursuant to the Chancellor’s Office manual, page 28.
- To include in any claims containing district staff hourly charges, the detailed itemized records for the direct expenses showing work performed beyond the normal work period, pursuant to the Chancellor’s Office manual, page 28.

Claimant argues that the comments of the Department of Finance and Chancellor’s Office should be excluded from the record because they are not accompanied by a declaration under penalty of perjury that they are true and complete to the best of the representative’s personal knowledge or information or belief.<sup>6</sup>

### **State Agencies Positions**

The Department of Finance, in comments submitted in February 2004, states that the district’s participation in the Community College Facility Deferred Maintenance Program is “entirely the result of a discretionary decision made by the governing board of each district to apply for available funding.” Thus, Finance concludes that the test claim statutes and regulations do not create a state-mandated reimbursable program, and request that the test claim be denied.

The Chancellor’s Office, in comments submitted in March 2004, states that the test claim provisions do not impose a new program or higher level of service because the Legislature funds the deferred maintenance program with funding specifically intended to fund the costs of the program, and because “participation in the program is not mandatory, but entirely voluntary.”

### **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’

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<sup>6</sup> While the claimant correctly states the rule in the Commission’s regulations, staff disagrees with the request to exclude the comments of Finance and the Chancellor’s Office from the official record. Most of the comments argue an interpretation of the law rather than constitute a representation of fact. If this case were to proceed to court on a challenge to the Commission’s decision, the court would not require sworn testimony for argument on the law. The ultimate determination whether a reimbursable state-mandated program exists is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.)

to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>7</sup> Thus, the subvention requirement of section 6 is “directed to state mandated increases in the services provided by [local government] ...”<sup>8</sup>

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.<sup>9</sup>
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.<sup>10</sup>
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.<sup>11</sup>
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.<sup>12</sup>

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.<sup>13</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>14</sup> 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.”<sup>15</sup>

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<sup>7</sup> *County of San Diego, supra*, 15 Cal.4th 68, 81.

<sup>8</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>9</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>10</sup> *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.

<sup>11</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>12</sup> *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.

<sup>13</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>14</sup> *County of San Diego, supra*, 15 Cal.4th 68, 109.

<sup>15</sup> *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 – Is the Chancellor’s Office manual an “executive order” over which the Commission has jurisdiction?**

The first issue is whether the Chancellor’s Office manual submitted by the claimant is an “executive order” over which the Commission can take jurisdiction. Government Code section 17516 defines “executive order” for purposes of mandate reimbursement as: “any order, plan, requirement, rule or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the governor. (c) Any agency, department, board, or commission of state government.”

The manual is issued by the Chancellor’s Office of the California Community Colleges, so it is issued by an agency of the state government. Authority for the manual comes from section 57202 of the title 5 regulations (a test claim regulation) that states: “Districts shall apply to the Chancellor’s Office for funding for deferred maintenance in the form and manner specified by the Chancellor.” (Cal.Code Regs., tit. 5, § 57202.)

The manual contains both requirements and guidelines for applying for deferred maintenance and hazardous substances funding. For example, it contains the requirement that project funding proposals are due by December 1 each year “to be considered for the upcoming year’s program.” The manual also states that the “format for submission of each Scheduled Maintenance Program project by a district is the Project Funding Proposal form (241/sm/PFP) and must contain the following information.” The manual then lists the information that the proposal must contain. These constitute “requirements” for the purposes of the definition of executive order in Government Code section 17516.

Thus, staff finds that that Chancellor’s Office manual, “Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals” is an executive order within the meaning of Government Code section 17516.

**Issue 2 - Do the test claim statutes, regulations, and Chancellor’s Office manual impose a state mandate on community college districts?**

As indicated above, reimbursement under article XIII B, section 6 is required only when, among other requirements, the state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>16</sup> Staff finds that the test claim statute, regulations, and manual do not impose a state-mandated program on community college districts because all the activities are only required as a condition of seeking funds in the deferred maintenance program.

The plain language of the test claim statute (§ 84660) is based on the district governing board’s voluntary application for funding. For example, it states:

- It is the intent of the Legislature in enacting this chapter that *funds be allocated pursuant to the requirements of this chapter* to provide for the deferred maintenance and special repair<sup>17</sup> of community college facilities. However, the Legislature recognizes that there

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<sup>16</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874.

<sup>17</sup> “For the purpose of this chapter, ‘deferred maintenance and special repair’ means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.” (§ 84660(b).)

may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, *nothing in this chapter shall be construed to create an annual state obligation* to fund this program. (§ 84660, emphasis added.)

- No community college district *shall receive funds pursuant to this chapter* unless the district expends at least ½ percent of its current operating budget for ongoing maintenance. (§ 84660(c), emphasis added.)

The Legislature requires that the rules and regulations adopted for the program do the following:

- Establish criteria for the ranking of *requests for funding* by districts for funds allocated;
- Require districts to prepare and submit to the board of governors a five-year maintenance plan that includes plans for preventative as well as deferred maintenance *in order to be eligible for state funding* of deferred maintenance; and
- Require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair *as a condition for receipt of state funding*, subject to a complete or partial waiver of this requirement based on a review of the financial condition of the district. (§ 84660 (b), emphasis added.)

Similarly, the title 5 regulations in the test claim state the following:

- Each community college district *applying to receive funds* pursuant to this chapter shall:
  - (a) Prepare and submit to the Chancellor a current five-year maintenance plan. . . .
  - (b) Maintain a level of ongoing maintenance during the year *for which funds are requested* commensurate with the level of activity in prior years. (§ 57201, emphasis added.)
- Districts shall *apply* to the Chancellor’s Office for funding for deferred maintenance in the form and manner specified by the Chancellor. (§ 57202.)
- The Chancellor will allocate funds for only 50 percent of the costs for a deferred maintenance project. *In accepting funds under this chapter*, a district agrees to spend district funds necessary to complete the project. The Chancellor may waive this requirement . . . [under specified circumstances]. (§ 57205, emphasis added.)

And according to the Chancellor’s Office manual:

- If funded, the [Scheduled Maintenance Project Funding Proposal] becomes an integral part of *the grant agreement* and all budgetary issues reference it. (p. 3, emphasis added.)
- A Hazardous Substances Project Funding Proposal (241/HS/PFP) is used *for requesting financial support for local assistance funds* in the state program’s budget for that project. (p. 23, emphasis added.)
- The instructions are “intended for districts *who wish to participate in the state-assisted Hazardous Substances Program assuming availability of funds.*” (p. 24, emphasis added.)

The highlighted portions above indicate that community college districts are not legally compelled by the state to comply with the requirements imposed by the plain language of the test

claim statute, regulations, or manual. Rather, the requirements result from the district's discretionary decision to apply for funding under the Deferred Maintenance program.

Generally, a community college district has the discretionary authority to: 1) acquire property necessary to carry out the powers or functions of the district; 2) manage and control district property; 3) determine and control the district's operational and capital outlay budgets; and (4) receive and administer gifts and grants.<sup>18</sup> Although community college districts are required to repair school property,<sup>19</sup> they are not required to seek state funding assistance to pay for the repairs. The plain language of the program provides that any community college may submit a proposed project for review and approval, and "request" state funding assistance.<sup>20</sup> Thus, it is the decision of a community college district to seek state funding assistance for proposed deferred maintenance projects that triggers the activities identified in the test claim statute, regulations, and manual. Under these circumstances, the activities are not mandated by the state.<sup>21</sup>

A community college district is required by state law to apply for state funding assistance under the Community College Construction Act (§§ 81800 et seq.) whenever the district does not have the funds available to repair, reconstruct, or replace school buildings that have been determined by a licensed structural engineer or licensed architect to be unsafe for use.<sup>22</sup> The Deferred Maintenance program, however, is not part of the Community College Construction Act. Moreover, a community college district has other options to pursue projects, such as issuing bonds.<sup>23</sup>

The California Supreme Court declared: "The proper focus under a legal compulsion inquiry is upon the nature of the claimants' participation in the underlying programs themselves."<sup>24</sup> This approach places the focus of inquiry on the local agency's (or community college district's)

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<sup>18</sup> Education Code sections 70902(b)(5), (b)(6), (b)(10), (b)(13), 81600, and 81606.

<sup>19</sup> Education Code section 81601.

<sup>20</sup> Education Code section 84660(b); California Code of Regulations, title 5, sections 57014, 57152.

<sup>21</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743; *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 880.

<sup>22</sup> Education Code section 81179, which states in part that "whenever the community college district does not have funds available to repair, reconstruct, or replace the school buildings referred to in this article or Section 16320, the community college district shall apply for the funds as may be necessary to accomplish the repair, reconstruction, or replacement pursuant to Chapter 4." Chapter 4 is located within Part 49 of the Education Code and is entitled the "Community College Construction Act of 1980, which is the subject of a separate test claim, *Community College Construction* (02-TC-47). The Deferred Maintenance and Special Repair program is in Chapter 4.7 of Part 50 of the Education Code and, thus, has nothing to do with the requirement in section 81179.

<sup>23</sup> Education Code section 81901 et seq.

<sup>24</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

initial decision whether or not to participate in the underlying program. Accordingly, where decision-making authority is reserved to a local agency, school district, or community college district, and that entity chooses to participate in a voluntary underlying program, the Legislature may issue requirements directing consequent conduct concerning that program. These “downstream” requirements with which the community college district entity must comply do not constitute reimbursable state mandates, as the Supreme Court stated in *Kern School Dist.*:

[A]ctivities undertaken at the option or discretion of a local government entity ... do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.<sup>25</sup>

Pursuant to the court’s holding in *Kern High School Dist.*, activities performed as a condition of the receipt of funding are not mandated by the state. With respect to optional funded programs like the Deferred Maintenance and Special Repair program, the court reasoned as follows:

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 . . . 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.<sup>26</sup>

The activities in the test claim statutes, regulations, and manual are required only if the district makes the discretionary decision to apply for funds. Based on the reasoning in the *Kern High School Dist.* case, since the initial decision to provide for the students is discretionary, the resulting downstream requirements are not legally compelled state mandates.

Claimant, in comments submitted in February and April 2004, argues that legal compulsion is not required to find a mandate. Claimant cites the legislative intent to fund deferred maintenance, and asserts that the program’s “carrot and stick” approach “equates to a very large carrot and a very short stick.” According to the claimant, ignoring available funding is “so far beyond the realm of practical reality that it leaves community college districts without any rational discretion.”

Staff disagrees. The Supreme Court in the *Kern* case described practical compulsion as “if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program...”<sup>27</sup> The penalty must be “certain and severe,” such as a penalty imposing “double taxation” or “other draconian consequences” on

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<sup>25</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

<sup>26</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 753.

<sup>27</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

the district.<sup>28</sup> There is no such penalty in the test claim statutes or regulations. In fact, the *Kern* court rejected a practical compulsion argument that was similar to claimant’s by stating: “the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs ‘too good to refuse’-even though, as a condition of program participation, they have been forced to incur some costs.”<sup>29</sup>

## **II. Conclusion**

For the reasons discussed above, staff finds that Education Code section 84660 (Stats. 1981, ch. 764, Stats. 1990, ch. 1372); sections 57201, 57202 and 57205 of the title 5 regulations; and the Chancellor’s Office manual do not impose a reimbursable state mandate on community college districts within the meaning of article XIII B, section 6, of the California Constitution.

## **III. Recommendation**

Staff recommends that the Commission adopt this analysis to deny the test claim.

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<sup>28</sup> *Id.* at page 752.

<sup>29</sup> *Id.* at page 731.

# SixTen and Associates

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September 8, 2011

Drew Bohan, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Re: CSM 02-TC-48  
Test Claim of Santa Monica Community College District  
Deferred Maintenance (CCD)

Dear Mr. Bohan:

I have received the Commission's Draft Staff Analysis (DSA) dated August 9, 2011, for the above-referenced test claim to which I respond on behalf of the test claimant. Issues raised by the DSA, but not responded to by this letter, are not waived.

In the February 24, 2004, rebuttal to the Department of Finance and the April 23, 2004, rebuttal to the Chancellor's Office responses to the test claim, the test claimant asserted that college districts are practically and legally compelled to repair and maintain facilities and obtain funding from the state for that purpose. The DSA concludes that none of the activities are reimbursable based on the threshold issue that district participation in the deferred maintenance funding program is discretionary.

Specifically, the DSA (11) concludes that any activities alleged to be mandates "are only required as a condition of seeking funds in the deferred maintenance program" based on the "plain language of the test claim statute." Therefore, the "districts are not legally compelled by the state to comply with the requirements imposed by the plain language of the test claim statute, regulations, or manual." (DSA 12, 13) The DSA (13) acknowledges that Education Code section 81601 requires districts to repair district property, but that districts "are not required to seek state funding assistance to pay for the repairs," and that any activities required to obtain funding are "triggered" by the request for funding. As for Section 81179, regarding the requirement in the Community College Construction Act for districts to apply for repair funds, the DSA (13) notes that

Drew Bohan, Executive Director

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September 8, 2011

this is the subject of another test claim. The ultimate DSA conclusion is that although districts may have an actual need for repairs and maintenance, and a legal requirement to apply for funds, the decision to apply for deferred maintenance program funds is discretionary and any activities required to obtain the deferred maintenance program funds are not mandated pursuant to the *Kern* decision.

The Commission has treated and decided this issue in five previous test claims.<sup>1</sup> The legal issue here is identical and the test claimant raises it here for purposes of the record and does not waive the issue.

### Certification

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents, if any, are true and correct copies of documents received from or sent by the state agency which originated the document.

Executed on September 8, 2011, at Sacramento, California, by



Keith B. Petersen

C: Commission electronic service list

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<sup>1</sup> CSM 01-TC-28 Prevailing Wage Rate  
CSM 02-TC-30/43 School Facilities Funding Requirements  
CSM 02-TC-47 Community College Construction  
CSM 03-TC-17 California Environmental Quality Act