

## COMMISSION ON STATE MANDATES

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March 27, 2013

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Division of Accounting and Reporting  
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*And Interested Parties and Affected State Agencies (See Mailing List)*

**RE: Final Staff Analysis, Proposed Statewide Cost Estimate, and Notice of Hearing  
Developer Fees, 02-TC-42  
Government Code Sections 65970, et al.  
Clovis Unified School District, Claimant**

Dear Mr. Palkowitz:

The final staff analysis and proposed statewide cost estimate for the above-named matter are enclosed.

### Hearing

This matter is set for hearing on **Friday April 19, 2013**, at 10:00 a.m., in the State Capitol, Room 447, Sacramento, California. This matter is proposed for the Consent Calendar. Please let us know in advance if you object to this item being on consent and therefore you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

### Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Kerry Ortman at (916) 323-3562 if you have any questions.

Sincerely,



Heather Halsey  
Executive Director

**Item 10**  
**Final Staff Analysis**  
**Proposed Statewide Cost Estimate**

**\$376,304**

Government Code Sections 65970, 65971, 65972, 65973, 65974, 65974.5,  
65975, 65976, 65977, 65978, 65979, 65980, 65981

Statutes 1977, Chapter 955, Statutes 1979, chapter 282, Statutes 1980,  
Chapter 1354, Statutes 1981, Chapter 201, Statutes 1982, Chapter 923, Statutes  
1983, Chapter 1254, Statutes 1984, Chapter 1062, Statutes 1985, Chapter 1498,  
Statutes 1986, Chapters 136 and 887, Statutes 1994, Chapter 1228

*Developer Fees*

02-TC-42

Clovis Unified School District, Claimant

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

This test claim, filed on June 27, 2003, addresses activities required as a condition of imposing developer fees to help pay for school facilities.

On December 1, 2011, the Commission adopted a statement of decision partially approving the test claim for new requirements as a condition of imposing developer fees. Parameters and guidelines were adopted on May 25, 2012.<sup>1</sup>

The Commission found that the School Facilities Act imposed a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2001 for school districts to perform the following activities:

- Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
  - 1) Conditions of overcrowding exists in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
  - 2) All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible methods for reducing those conditions exist.
- Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

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<sup>1</sup> Exhibit A.

- Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

If an ordinance is adopted by the city council or county board of supervisors pursuant to Government Code section 65974 requiring the dedication of land, the payment of fees in lieu thereof, or a combination of both:

- Make a recommendation regarding the amount of fees to be assessed, within 60 days following the initial permit for the development, when required by the city council or county board of supervisors; and
- Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, enter into an agreement with the city or county for the purpose of determining the distribution of revenues to both school districts from the fees levied pursuant to the School Facilities Act.

If a school district receives funds pursuant to the School Facilities Act:

- Maintain a separate account for any fees paid; and
- File a report by October 15 of each year with the city council or county board of supervisors which specifies:
  - The balance in the account at the end of the previous fiscal year;
  - The facilities leased, purchased, or constructed;
  - The dedication of land during the previous fiscal year; and
  - Which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist.

All other reimbursement for activities requested by the claimant with respect to collecting developer fees were denied by the Commission.

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2001, and June 30, 2011) with the State Controller's Office (SCO) by January 2, 2013. Reimbursement claims for fiscal year 2011-2012 are due by February 15, 2013.

#### Eligible Claimants and Period of Reimbursement

Any "school district" as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 27, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2001.

## **Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

### **A. Local Government Notice of Finding**

1. Notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that:
  - Conditions of overcrowding exists in one or more of the attendance areas within the district that will impair the normal functioning of educational programs, and
  - All reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible methods for reducing those conditions exist.
2. Specify in the notice of findings the reason for the existence of the overcrowding conditions and the mitigation measures considered and include a copy of a completed application to the OPSC for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976.

### **B. Schedule of Fees**

Submit to the city council or county board of supervisors a schedule for the use of fees, including the school sites to be used, classroom facilities to be made available, and the times when those facilities will be available. The schedule shall be submitted before the city or county makes a decision to require the dedication of land or the payment of fees, or to increase the amount of land to be dedicated or the fees to be paid.

### **C. Fee Amount**

If an ordinance is adopted by the city council or county board of supervisors pursuant to Government Code section 65974 requiring the dedication of land, the payment of fees in lieu thereof, or a combination of both:

1. Make a recommendation regarding the amount of fees to be assessed, within 60 days following the initial permit for the development, when required by the city council or county board of supervisors; and
2. Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, enter into an agreement with the city or county for the purpose of determining the distribution of revenues to both school districts from the fees levied pursuant to the School Facilities Act.

### **D. Fund Accounting**

If a school district receives funds pursuant to the School Facilities Act of 1979:

1. Maintain a separate account for any fees paid; and
2. File a report by October 15 of each year with the city council or county board of supervisors which specifies:

- The balance in the account at the end of the previous fiscal year;
- The facilities leased, purchased, or constructed;
- The dedication of land during the previous fiscal year; and Which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist.

## Statewide Cost Estimate

### Assumptions

Staff reviewed the reimbursement claims data submitted by 10 school districts and compiled by the SCO. The actual claims data showed that 55 initial claims were filed for fiscal years 2001-2002 through 2010-2011 and three annual claims for fiscal year 2011-2012 for a total of \$376,304.<sup>2</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are approximately 1055 school districts in California, of those, only 10 districts filed initial reimbursement claims totaling \$354,692 for this program for fiscal years 2001-2002 through 2010-2011. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2001-2002 through 2010-2011 may be filed until January 2, 2014.
  - Also, according to the claims data, three of those same districts already filed annual reimbursement claims totaling \$21,612 for fiscal year 2011-2012. Late annual reimbursement claims for fiscal year 2011-2012 may be filed until February 15, 2014.
- *The number of reimbursement claims filed will vary from year to year.*

This program requires school districts to notify the city council or county board of supervisors if the school district finds, based on clear and convincing evidence, that, as a result of new development: 1) conditions of overcrowding exist in one or more of the attendance areas that impair the normal functioning of the educational programs; 2) all reasonable methods of mitigating conditions of overcrowding have been evaluated by the district; and 3) no feasible method exists to reduce the overcrowding conditions. Claims will vary depending on new development in an area and the ability of a district to absorb the resulting increased student enrollment. Furthermore, the rate and volume of development is not constant. Therefore, claims will likely follow broader economic and land development trends.

- *The Commission approved only a portion of the School Facilities Act program as a mandate.*

Other portions of the School Facilities Act and all of the AB 2926 and the Mitigation Fee Act programs activities, which were pled in the same test claim were found not to impose a reimbursable state-mandated new program or higher level of service. The costs claimed thus far may exceed what is reimbursable if they include costs of the AB 2926 and the

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<sup>2</sup> Claims data reported as of January 22, 2013.

Mitigation Fee Act programs or any activities under the School Facilities Act program which were not specifically approved in the test claim and parameters and guidelines decisions.

- *School districts are only eligible to be reimbursed for the activities approved in the mandate if they make a finding of overcrowding and only if that finding is based on clear and convincing evidence. Clear and convincing evidence is a very high standard. There may be several reasons that other school districts did not file for reimbursement, including but not limited to:*
  - The school districts did not have overcrowding that was created by new development; or
  - The school districts were unable to meet the “clear and convincing”<sup>3</sup> standard needed to prove the overcrowding.
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

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<sup>3</sup> “Clear and convincing” evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence (CA BAJI 2.62, *Burden of Proof and Clear and Convincing Evidence*).

## Methodology

### *Fiscal Years 2001-2002 through 2011-2012*

The statewide cost estimate for fiscal years 2001-2002 through 2011-2012 was developed by totaling the 58 reimbursement claims filed with the SCO for these years, for a total of \$376,304. This averages to \$34,209 annually in costs for the state over this eleven-year period. Following is a breakdown of estimated total costs per fiscal year:

| <b>Fiscal Year<sup>4</sup></b> | <b>Number of Claims Filed with SCO</b> | <b>Estimated Cost</b> |
|--------------------------------|--|-----------------------|
| 2001-2002                      | 4                                      | \$18,499              |
| 2002-2003                      | 4                                      | \$19,497              |
| 2003-2004                      | 4                                      | \$36,273              |
| 2004-2005                      | 4                                      | \$23,209              |
| 2005-2006                      | 7                                      | \$40,677              |
| 2006-2007                      | 6                                      | \$29,385              |
| 2007-2008                      | 6                                      | \$43,667              |
| 2008-2009                      | 7                                      | \$31,346              |
| 2009-2010                      | 7                                      | \$63,178              |
| 2010-2011                      | 6                                      | \$48,961              |
| 2011-2012                      | 3                                      | \$21,612              |
| <b>TOTAL</b>                   | <b>58</b>                              | <b>\$376,304</b>      |

### **Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate**

On February 27, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate<sup>5</sup> for comments. No comments were received.

### **Staff Recommendation**

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$376,304** for costs incurred in complying with the *Developer Fees* program.

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<sup>4</sup> Initial reimbursement claims were filed for fiscal years 2001-2002 through 2010-2011 and annual reimbursement claims were filed for fiscal year 2011-2012.

<sup>5</sup> Exhibit B

## Commission on State Mandates

Original List Date: 7/8/2003  
Last Updated: 9/10/2012  
List Print Date: 03/27/2013  
Claim Number: 02-TC-42  
Issue: Developer Fees

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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